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8

9 UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 [San Francisco Division]

12
13 MANI SUBRAMANIAN, as an individual
etc.,

14 Plaintiff,

15 vs.
16

17 ST. PAUL FIRE AND MARINE
INSURANCE COMPANY, et al. (including
18 QAD INC., a Delaware Corporation with
principal place of business in California; JOHN
DOORDAN, an individual and citizen of
19 California; LAI FOON LEE, an individual and
citizen of California; ROLAND DESILETS, an
20 individual and citizen of New Jersey; and,
WILLIAM D. CONNELL, an individual and
21 citizen of California),

22 Defendants.
23

Case No. 08-cv-1426-VRW [ECF]

Date: October 9, 2008
Time: 2:30 p.m.
Dept: Courtroom 6
Judge: Hon. Vaughn R. Walker

24 **REQUEST FOR JUDICIAL NOTICE**
25 **IN SUPPORT OF MOTION BY DEFENDANTS**
26 **QAD INC., WILLIAM D. CONNELL, JOHN DOORDAN, AND LAI FOON LEE**
27 **TO DISMISS COMPLAINT PURSUANT TO FRCP RULE 12(b)(6)**
28

1 QAD Inc. (“QAD”), William D. Connell (“Mr. Connell”), John Doordan (“Mr. Doordan”),
 2 and Lai Foon Lee (“Ms. Lee”)(collectively the “QAD-related defendants, in support of their
 3 Motion to Dismiss the Complaint (“Complaint”) of Plaintiff Mani Sub-ramanian (“Plaintiff” or
 4 “Mr. Subramanian”) pursuant to Rule 12(b)(6), Fed.R.Civ.Proc., ”), request that the Court take
 5 judicial notice, pursuant to Rule 201(b)(2), Federal Rule of Evidence, of the following documents
 6 and materials, which are: (1) referenced in the Complaint and/or (2) public records (i.e., court
 7 records filed in this Court or in the Superior Court of California for the County of Santa Clara):

8 1. Exhibit A – The Third Amended Complaint in *Vedatech-Japan K.K., et al. v. QAD,*
 9 *Inc., et al.*, No. CV 784685, Santa Clara County Superior Court, filed on or about December 21,
 10 2001.

11 2. Exhibit B – The First Amended Complaint in *Vedatech Inc., et al. v. St. Paul Fire &*
 12 *Marine Insurance Co., et al.*, United States District Court Case No. 04-1249-VRW, filed on or
 13 about March 30, 2004.

14 3. Exhibit C – Request for Dismissal filed by Mr. Subramanian in *Vedatech-Japan*
 15 *K.K., et al. v. QAD, Inc., et al.*, No. CV 784685, Santa Clara County Superior Court, on or about
 16 May 26, 2006, with respect to defendant John Doordan, showing dismissal entered as requested on
 17 that date.

18 4. Exhibit D – Judgment by Court under C.C.P. 437c, entered on or about May 24,
 19 2006, in favor of defendant Lai Foon Lee as to all claims in *Vedatech-Japan K.K., et al. v. QAD,*
 20 *Inc., et al.*, No. CV 784685, Santa Clara County Superior Court.

21 5. Exhibit E – Order of Walker, Chief J., entered on June 22, 2005, in *Vedatech Inc., et*
 22 *al. v. St. Paul Fire & Marine Insurance Co., et al.*, United States District Court Case No. 04-1249-
 23 VRW and related matters.

24 6. Exhibit F – Notice of Dismissal of Appeal in *Mani Subramanian, Plaintiff and*
 25 *Appellant v. Lai Foon Lee, Defendant and Respondent*, Case No. H030456, California Court of
 26 Appeal for the Sixth District, entered on October 13, 2006, and Notice that petition for review is
 27 denied in California Supreme Court Case No. S156063.

28 ///

1 Dated: August 4, 2008

2 WILLIAM D. CONNELL
3 SALLIE KIM
4 GCA LAW PARTNERS LLP

5 By: William D. Connell.
6 William D. Connell

7 By: Sallie Kim.
8 Sallie Kim

9 Attorneys for Defendants QAD Inc.,
10 John Doordan, Lai Foon Lee, and
11 William D. Connell

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EXHIBIT A -
QAD Request for Judicial Notice

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 VEDATECH-JAPAN K.K. and MANI SUBRAMANIAN

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

VEDATECH-JAPAN K.K., a Japanese
 Corporation; MANI
 SUBRAMANIAN, an individual,

No. CV 784685

(VERIFIED)

Plaintiffs,

THIRD AMENDED COMPLAINT OF
 PLAINTIFFS FOR

vs.

QAD, Inc., a Delaware Corporation;
 QAD JAPAN Inc., a Delaware
 corporation; QAD JAPAN K.K. a
 Japanese corporation; ARTHUR
 ANDERSEN LLP, a limited partnership
 located in California; NOMURA
 RESEARCH INSTITUTE HONG
 KONG LIMITED, a Hong Kong
 Corporation; NOMURA RESEARCH
 INSTITUTE LIMITED, a Japanese
 Corporation; JOHN DOORDAN, an
 individual; LAI FOON LEE, an
 individual; ISAO TAKATORI, an
 individual; and DOES 1 through 50
 inclusive;

BREACH OF CONTRACT; BREACH
 OF COVENANT OF GOOD FAITH
 AND FAIR DEALING; FRAUD;
 CONSTRUCTIVE FRAUD;
 NEGLIGENCE MISREPRESENTATION;
 INTENTIONAL INTERFERENCE
 WITH CONTRACTUAL RELATIONS
 AND BUSINESS ADVANTAGE;
 NEGLIGENCE INTERFERENCE WITH
 CONTRACTUAL RELATIONS AND
 BUSINESS ADVANTAGE;
 INTENTIONAL INTERFERENCE
 WITH PROSPECTIVE ECONOMIC
 ADVANTAGE; NEGLIGENCE
 INTERFERENCE WITH
 PROSPECTIVE ECONOMIC
 ADVANTAGE; TRADE LIBEL;
 DISPARAGEMENT OF GOODS AND
 QUALITY; CONVERSION; BREACH
 OF FIDUCIARY DUTY; AND UNFAIR
 COMPETITION

Defendants.

AND RELATED CROSS-ACTION

(UNLIMITED JURISDICTION)

Plaintiffs VEDATECH-JAPAN K.K. ("VEDATECH-JAPAN"), a Japanese corporation, and Mani Subramanian ("SUBRAMANIAN"), an individual, bring this Complaint against Defendants QAD Inc. ("QAD-USA"), a Delaware corporation, QAD Japan Inc., a Delaware corporation ("NEW-QAD-JAPAN"), QAD JAPAN K.K. a Japanese corporation ("OLD-QAD-JAPAN"), Arthur Andersen LLP, a limited partnership located in California ("ANDERSEN"), Nomura Research Institute Hong Kong Limited, a Hong Kong Corporation ("NRI-HKG"), Nomura Research Institute Limited, a Japanese Corporation ("NRI-JAPAN"), LaiFoon LEE, an individual ("LEE"), John Doordan, an individual ("DOORDAN"), Isao Takatori, an individual, ("Takatori") and DOES 1 through 50 inclusive;

THE PARTIES AND RELATED INDIVIDUALS AND ENTITIES

Plaintiffs VEDATECH-JAPAN AND SUBRAMANIAN

1 VEDATECH-JAPAN is a Japanese corporation, established in 1991, with its current principal place of business in Yokohama, Japan.

2 SUBRAMANIAN is a citizen of the United States and, at all times relevant to this Complaint, has resided in Japan. SUBRAMANIAN is, and was, for all material periods relevant to this action, the Representative Director of VEDATECH-JAPAN.

3 VEDATECH-JAPAN and SUBRAMANIAN may be referred to collectively herein as "Plaintiffs".

Defendant QAD-USA

4 Upon information and belief, defendant QAD-USA was a California corporation from around 1991 to around 1997, and in or around 1997 became, and to this date is, a Delaware corporation that has been continuously and regularly transacting business in

1 California. QAD-USA has at all times relevant to this Complaint, maintained its
2 principal place of business in or near Carpinteria (near Santa Barbara), California, and a
3 sales office in San Jose, California.

4
5 Upon information and belief, the sales office in San Jose, California has been
6 relocated recently. QAD-USA also, for some time now, maintains executive offices in its
7 new buildings in Ortega Hill in Summerland, near Santa Barbara, California

8 6 Upon information and belief, QAD-USA has a branch office in Hong Kong operating
9 under the name "Qad Asia-Pacific" or such similar name.

10
11 **Defendant NEW-QAD-JAPAN (Qad Japan Inc.)**

12 7 Upon information and belief, defendant NEW-QAD-JAPAN is a corporation
13 organized and existing under the laws of the state of Delaware.

14
15 8 NEW-QAD-JAPAN maintains, and at all times relevant to this Complaint, has
16 maintained a branch office in the city of Tokyo, Japan, but its effective headquarters is
17 the same as that of QAD-USA, viz., Carpinteria / Summerland, California.

18 9 Defendant DOORDAN was for all material times a director of and the operational
19 manager of NEW-QAD-JAPAN.

20
21 **NEW-QAD-JAPAN is an alter ego of QAD-USA**

22 10 Plaintiffs are informed and believe, and thereupon allege that defendant NEW-QAD-
23 JAPAN is so dominated and controlled by QAD-USA and that the recognition of its
24 separate corporate identity will promote a serious injustice and fraud on this Court, that
25 for the purposes of this action, NEW-QAD-JAPAN and QAD-USA are alter egos of each
26 other.

27
28 11 The management of NEW-QAD-JAPAN reported to DOORDAN at all material times.

12 NEW-QAD-JAPAN was set up expressly by QAD-USA, DOORDAN, and others for the sole purpose of taking over the business of OLD-QAD-JAPAN and in the pursuit of the fraudulent and tortious activities detailed in this Complaint.

4
5 **Defendant OLD-QAD-JAPAN (Qad Japan K.K.)**

6 13 Upon information and belief, Defendant Qad Japan K.K. ("OLD-QAD-JAPAN") is a corporation organized (and believed to be currently existing) under the laws of Japan. OLD-QAD-JAPAN, until October 1997, maintained its offices in Yokohama, Japan.

9
10 **OLD-QAD-JAPAN is an alter ego of QAD-USA since December 1997**

11 14 Plaintiffs are informed and believe, and thereupon allege that since December 1997, OLD-QAD-JAPAN has been so dominated and controlled by QAD-USA (and has essentially been reduced to a non-entity, its business having been taken over by NEW-QAD-JAPAN) and allege that the recognition of its separate corporate identity will promote a serious injustice and fraud on this Court, so that, for the purposes of this action, and for the period December 1997 through the current date), OLD-QAD-JAPAN and QAD-USA are alter egos of each other.

18
19 **Defendant ARTHUR ANDERSEN**

20 15 Upon information and belief, defendant ANDERSEN is a limited partnership located in California, and regularly transacts business in California and all over the world under the concept of "One Firm".

23 16 ANDERSEN maintains offices in numerous locations, including the city of Los Angeles, California, the city of San Jose, California, and the city of Tokyo, Japan.

26 17 The partners, employees and other agents of ANDERSEN relevant to this action worked out of the Los Angeles and Tokyo offices of ANDERSEN.

2
3 18 Defendant NRI-JAPAN is a corporation organized and existing under the laws of
4 Japan, with its corporate headquarters located in the city of Tokyo, Japan. NRI-JAPAN
5 has affiliates or subsidiaries operating in the State of California.

6 Defendant NRI-HKG

7
8 19 Upon information and belief, defendant NRI-HKG is a corporation organized and
9 existing under the laws of Hong Kong, Special Administrative Region (SAR), People's
10 Republic of China, with its principal place of business in Hong Kong.

11 20 Upon information and belief, defendant NRI-HKG engaged in various business
12 activities in California relating to this Complaint and specifically involving, among
13 others, defendants QAD-USA and DOORDAN.

14 NRI-HKG and NRI Pacific Inc. are alter egos of NRI-JAPAN

15
16 21 Plaintiffs are informed and believe that NRI-HKG, and a California corporation called
17 NRI Pacific, Inc., transacting business in San Mateo, California, are, for the purpose of
18 this Complaint, so dominated and controlled by NRI-JAPAN and have such a unity of
19 interest and ownership to the extent that these two subsidiaries have no separate identities
20 of their own.

21
22 22 Furthermore these companies undertook and continue to undertake actions that
23 caused injuries to the Plaintiffs and continue to undertake actions that are meant to cover
24 up such causation; all three of NRI-JAPAN, NRI-HKG and NRI Pacific Inc. are all alter
25 egos of each other and maintenance of the separate identities will promote an injustice
26 and fraud relating to the identification of the facts surrounding this Complaint and
27 bringing the actors to justice.

1 Defendant JOHN DOORDAN

2
3 23 Defendant DOORDAN is an individual. Upon information and belief, during all
4 times relevant to this Complaint, defendant DOORDAN resided in the State of California,
5 and maintained his principal place of work at the offices of QAD-USA in the city of San
6 Jose, California.

7 24 In the second half of 1993 and through the middle part of 1995, DOORDAN worked
8 out of the Hong Kong branch offices of QAD-USA as the Asia-Pacific Regional Director
9 and supervised a large staff dealing with sales and support in the Asia-Pacific region,
10 including Japan.

11 25 From information and belief, DOORDAN maintained a home in or near Los Gatos
12 near Santa Clara county during his time working in Hong Kong.

13 26 In or around 1995 DOORDAN moved back to the bay area (near Los Gatos) and
14 started to work out of the offices of QAD-USA in San Jose, California.

15 27 Upon information and belief, after the initiation of this lawsuit, DOORDAN has been
16 attempting to reside outside of California.

17
18
19 Defendant LAI FOON LEE

20 28 Defendant LEE is an individual.

21
22 29 From the early part of 1997 LEE worked for QAD-USA at its headquarters near Santa
23 Barbara (in the Ortega Hills office at Summerland or the Carpinteria offices), and
24 continued to work for QAD-USA through all times material to this Complaint.

25 30 Upon information and belief, LEE currently resides in or around the county of Santa
26 Clara.

1 Defendant ISAO TAKATORI

2
3 31 Defendant TAKATORI is an individual. Upon information and belief, TAKATORI is
4 a citizen of Japan and, at all times relevant to this Complaint, resided in Hong Kong, and
5 traveled to and engaged in various business activities in California directly related to this
6 Complaint and involving, among others, defendants QAD-USA and DOORDAN. Upon
7 information and belief, since about six months ago, TAKATORI has left NRI-HKG and
8 has presumably moved back to Japan.

9 Karl Lopker and Pamela Lopker

10
11 32 Karl Lopker ("KLOPKER"), a resident of the State of California is, and has been at all
12 times relevant to this matter, Chief Executive Officer, Secretary, and / or a Director of
13 QAD-USA.

14 33 KLOPKER and his wife, Pamela Lopker ("PLOPKER"), together are, and have been
15 at all times relevant to this matter, majority shareholders of QAD-USA, and directors of
16 OLD-QAD-JAPAN. One or both of them were directors and/or shareholders of NEW-
17 QAD-JAPAN at all material times.

18
19 34 From information and belief, PLOPKER is either the founder or co-founder of QAD-
20 USA. KLOPKER is also either the founder or co-founder or in any event joined his wife
21 shortly after its establishment in order to help run the business. KLOPKER along with
22 his wife PLOPKER form the driving force and the husband-wife team leading QAD-USA
23 from its inception.

24 35 QAD-USA maintains a management group comprised of its senior executives called
25 the E-team or some similar name. Notwithstanding this, no major decision is taken at
26 QAD-USA without the concurrence and explicit approval of KLOPKER (and in some
27 instances, additionally PLOPKER).

36 Plaintiffs are ignorant of the capacities of other defendants sued here under fictitious names as DOES 1 through 50, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs will amend the Complaint to allege their true names and capacities when properly such are properly ascertained. Plaintiffs are informed and believe, and thereupon allege that each of the fictitiously named defendants is responsible in some manner for the occurrences and/or injuries alleged herein, and that Plaintiffs' injuries were proximately caused by such defendants. QAD-USA, NEW-QAD-JAPAN, ANDERSEN, NRI-JAPAN, NRI-HKG, DOORDAN, LEE, TAKATORI, and the defendants sued as DOES 1 through 50 are referred to individually as "Defendant" or "defendant" and collectively herein as "Defendants" or "defendants".

37 Plaintiffs are informed and believe that each defendant is, and at all relevant times was, an individual (or a business entity such as, without limitation, a corporation or a (limited) partnership), and/ or the agent and/ or employee or otherwise acting for, on behalf of, or in concert with each other co-defendant, and in committing the alleged acts, was acting either in an individual capacity or in the scope of his, her or its agency or employment or with the permission and consent of other co-defendants, and that each defendant is legally responsible for the injuries and damages to plaintiffs alleged herein to the full extent given that they participated in the conspiracies they are alleged herein, or so proven at trial to have so participated in.

BACKGROUND FACTS RELEVANT TO ALL CLAIMS

The business of VEDATECH-JAPAN

38 The principal business of VEDATECH-JAPAN, at all times relevant to this Complaint, was the provision of services in the Information Technology area to Japanese

1 multinationals, or to US and European multinationals operating in Japan. In order to
2 accomplish this goal, VEDATECH-JAPAN actively entered into partnerships with
3 software vendors such as QAD-USA whose software products are large and complex.

4
5 39 VEDATECH-JAPAN helped software vendors establish a foothold in a difficult
6 Japanese market, in return for which such vendors promoted and supported VEDATECH-
7 JAPAN in obtaining a significant portion of the follow-on service business (known in the
8 application software industry as "implementation business").

9 40 Since this follow-on service business is typically very profitable, there is considerable
10 incentive among service companies to enter into preferred, and typically lucrative
11 relationships with software vendors such as QAD-USA.

12 The business of QAD-USA

13
14 41 The principal business of QAD-USA, at all times relevant to this Complaint, was the
15 development and marketing of software for the planning operations of manufacturing
16 enterprises. The primary product of QAD-USA in such relevant periods was a software
17 package called MFG/PRO.

18
19 42 During the calendar years 1992 and 1993, QAD-USA, through defendant DOORDAN
20 located in the Hong Kong branch office of QAD-USA (such branch office doing business
21 in Hong Kong under the name "QAD Asia-Pacific" or similar name), was involved in
22 various business contacts with VEDATECH-JAPAN, a portion of such contacts, in the
23 early days in 1992 and/or 1993; relating to a common customer of QAD-USA and
24 VEDATECH-JAPAN in Tokyo, Japan.

25 Contract formation between QAD-USA and VEDATECH-JAPAN

26
27 43 In March 1994, QAD-USA, after a period of or around seven (7) months of intense
28 negotiations that were undertaken between SUBRAMANIAN, DOORDAN and

KLOPFER, entered into a written agreement with VEDATECH-JAPAN (the "March Agreement"), wherein VEDATECH-JAPAN would assist QAD-USA in setting up a subsidiary in Japan whose purpose would be to be the sole supplier of the QAD-USA software products in Japan, and further maintain control over other service providers. VEDATECH-JAPAN would provide personnel services to QAD-USA to be in turn used by the Japanese subsidiary to be so established.

44 The consideration for the services provided by VEDATECH-JAPAN and for the opportunity cost and other factors relating to the commitment that VEDATECH-JAPAN and SUBRAMANIAN were providing QAD-USA per this March Agreement (and the subsidiary agreement between OLD-QAD-JAPAN and SUBRAMANIAN that was foreseen in the March agreement), was that QAD-USA would

44.01 pay for any services provided at agreed upon rates,

44.02 enable VEDATECH-JAPAN to obtain a significant share of the follow-on services business to Japanese multinationals worldwide, or to US or European multinationals in Japan.

45 Since the follow-on services came AFTER the successful sale of software to such customers, it was understood by both QAD-USA and VEDATECH-JAPAN (and reflected in their subsequent behavior) that the first order of business was to establish a strong sales presence for the sale of the MFG/PRO software (especially its version to be modified for Japan).

46 Upon establishing such sales, VEDATECH-JAPAN would benefit by being a preferred implementation partner that was actively promoted by QAD-USA or its affiliates and agents.

A 2845

47 The original agreement provided for SUBRAMANIAN to be the full-time President and Representative Director of QAD-USA's Japanese subsidiary that was to be established (which eventually came to be known as QAD Japan K.K., referred to herein as "OLD-QAD-JAPAN").

48 As per this original agreement, VEDATECH-JAPAN would assist QAD-JAPAN in finding an appropriate Japanese president for the management of this subsidiary.

Establishment of OLD-QAD-JAPAN in July 1994

49 OLD-QAD-JAPAN, a corporation organized under the laws of Japan, was established in July 1994 with QAD-USA contributing capital for 1999 shares and SUBRAMANIAN contributing capital towards 1 share.

50 OLD-QAD-JAPAN is different from NEW-QAD-JAPAN. NEW-QAD-JAPAN was established in or around August 1997 expressly and specifically in order to harm Plaintiffs and destroy OLD-QAD-JAPAN and to fraudulently induce customers to shift their business from OLD-QAD-JAPAN to NEW-QAD-JAPAN.

51 The finances of OLD-QAD-JAPAN was arranged so that QAD-USA would fund its operations directly. In the beginning, it was envisaged that QAD-USA would make payments to VEDATECH-JAPAN directly, or under its control.

ANDERSEN's role in the establishment and operation of OLD-QAD-JAPAN

52 Even prior to the formal contract with QAD-USA in March 1994, Plaintiffs had an existing relationship with ANDERSEN through various contacts and relationships with senior partners at ANDERSEN. Plaintiffs introduced ANDERSEN and other firms such as KPMG-Japan and various smaller outfits to QAD-USA as potential candidates for helping with the complicated Japanese procedures for the proper establishment of a Kabushiki Kaisha (stockholding company, or the equivalent of a C-corporation).

53 Under authorization from Ms. Barbara Whatley ("WHATLEY") who was then Chief Financial Officer of QAD-USA, Mr Bennet Chan (Regional Controller of QAD-USA's branch office in Hong Kong) personally interviewed the various candidates in Japan and approved of the selection of ANDERSEN (recommended by Plaintiffs) for helping with the establishment of OLD-QAD-JAPAN.

54 Thus, Plaintiffs, with the concurrence of QAD-USA, hired ANDERSEN to help them set up OLD-QAD-JAPAN. ANDERSEN arranged for the observance of the various Japanese formalities, and established OLD-QAD-JAPAN with SUBRAMANIAN as the local promoter with 1 share and QAD-USA as the majority shareholder with 1999 shares.

55 Furthermore, ANDERSEN's partners served as directors on the board of OLD-QAD-JAPAN from its inception.

Replacement of ANDERSEN with KPMG-JAPAN in 1995

56 In or around early 1995, Ms. Barbara WHATLEY visited Japan to review the setup and operations of OLD-QAD-JAPAN.

57 Plaintiffs arranged for WHATLEY to meet the local banks, KPMG-Japan and other service providers of OLD-QAD-JAPAN relevant to its financial management.

58 WHATLEY had a change of heart about which professional firm to use in supporting the operations of OLD-QAD-JAPAN and was of the opinion that she would prefer to use KPMG-JAPAN as she was dealing with KPMG in California regarding the affairs of QAD-USA and it would be better for her to work with KPMG in Japan also.

59 Thus, in order to accommodate the feelings of WHATLEY, ANDERSEN was replaced with KPMG-Japan and the board of directors was reconstituted to include executives from QAD-USA, in addition to SUBRAMANIAN who continued to serve as the Representative Director of OLD-QAD-JAPAN.

Additions, Variations and Extensions to/of the initial one-year agreement

60 Before the end of this initial one-year period, both parties realized that the goals set out in the March Agreement (the written agreement) were more difficult than was mutually envisaged.

61 QAD-USA specifically requested SUBRAMANIAN and VEDATECH-JAPAN, and SUBRAMANIAN AND VEDATECH-JAPAN agreed that the agreement between QAD-USA and VEDATECH-JAPAN would be orally modified, added to, and extended for a number of terms, without a limit on the number of such automatic extensions, and with the mutual agreement that the right time to transition into a pure partnership relating to implementation services would be when the parties mutually agreed that the initial goals established for the March Agreement were achieved.

62 Furthermore, it was additionally orally agreed between the parties that SUBRAMANIAN would be officially appointed for a two-year term as Representative Director of OLD-QAD-JAPAN. It was agreed that SUBRAMANIAN would serve as the Representative Director until the parties could agree on the timing and selection of a Japanese president of OLD-QAD-JAPAN.

63 It was also agreed that in return for the long-term commitment of VEDATECH-JAPAN and SUBRAMANIAN to the business of QAD-USA through its subsidiary in Japan, QAD-USA in turn would commit itself long-term to ensuring VEDATECH-JAPAN being its preferred implementation partner and to the financial success of the VEDATECH-JAPAN implementation business relating to MFG/PRO.

64 It was specifically recognized by all the parties to such agreements that they were entering into a closer relationship over a longer term than was originally envisaged in the original March Agreement, and that the March Agreement was only a small portion of the scope and extent of the renewed and expanded agreement between the parties.

1 Formalization the long-term appointment of SUBRAMANIAN
2

3 65 KPMG-JAPAN, hired expressly to accommodate the wishes of QAD-USA, was asked
4 to conduct the formalities necessary for the appointment of SUBRAMANIAN to the two-
5 year period as Representative Director of OLD-QAD-JAPAN.

6 66 Whereas the other aspects of the oral agreement that added to, varied and extended the
7 initial one-year written agreement were never captured on paper, the conduct of the
8 parties since early 1995 through 1997 clearly demonstrate the fact of such agreement and
9 the terms and conditions of such agreement.
10

11 **Role of DOORDAN in the management of OLD-QAD-JAPAN**

12 67 DOORDAN, as Regional Director of QAD-USA's branch office in Hong Kong in the
13 1993 - 1995 period, had responsibilities for sales and support in the Asia-Pacific region
14 that included Japan before the establishment of OLD-QAD-JAPAN. It was DOORDAN
15 that initially negotiated with SUBRAMANIAN and VEDATECH-JAPAN, and
16 DOORDAN who was responsible for the first sale of the MFG/PRO software in Japan,
17 which first sale was accomplished in or before 1992 to a customer in Tokyo, Japan.
18

19 68 Thus, after the establishment of OLD-QAD-JAPAN, QAD-USA made DOORDAN
20 responsible on the QAD-USA side to manage and coordinate all issues relating to its
21 newly formed majority owned subsidiary, OLD-QAD-JAPAN.

22 69 In early 1995, as described above, KPMG-Japan formalized the two-year appointment
23 of SUBRAMANIAN as Representative Director of OLD-QAD-JAPAN, and when
24 ANDERSEN and its directors on the board of OLD-QAD-JAPAN were relieved of its
25 duties towards OLD-QAD-JAPAN. At this time, DOORDAN was appointed as one of
26 the directors of OLD-QAD-JAPAN along with KLOPKER. This was done to ensure
27 adequate representation of QAD-USA in the affairs of OLD-QAD-JAPAN.
28

70 In or around late 1995, QAD-USA started a worldwide overhaul of its management structure. From managing its various branch offices worldwide by region, it started experimenting with a structure where the organization was divided into various groups reflecting customer segments (such as the "Electronics" market segment, the "Automotive" market segment, the "Consumer Products" market segment etc.

71 A direct result of this was that the position that DOORDAN enjoyed as Regional Director of Hong Kong was eliminated and DOORDAN was assigned the position of managing the "Electronics" sales segment worldwide, operating out of the San Jose, California offices of QAD-USA.

72 At one point in time, DOORDAN told SUBRAMANIAN that he was the brain behind this verticalization idea as he had wanted to move back to San Jose for personal reasons.

73 By early 1996, the performance of the new organization, including that of DOORDAN in his new job was so poor that QAD-USA got into serious financial trouble. Its profits were plummeting and cash was becoming scarce.

Cash Flow Problems at QAD-USA and layoffs at OLD-QAD-JAPAN

74 Thus, starting from or around early 1996, QAD-USA started to experience severe cash flow problems. Since OLD-QAD-JAPAN was still not in a profit-making mode and was dependent on QAD-USA for continuing financial support, this led to layoffs and cutbacks at OLD-QAD-JAPAN. Many of the employees left at OLD-QAD-JAPAN, including Nobuo Kanehara ("KANEHARA") and Takeshi Nagae ("NAGAE") became very disturbed by these turn of events and built up resentment towards the management, which inevitably became directed as SUBRAMANIAN, who was the de facto leader in Japan. DOORDAN, later, exploited this unhappiness for his own personal gain.

75 QAD-USA sent regular communications to all of its offices and subsidiaries warning of the cash crunch. DOORDAN, who was still trying to stay involved with the affairs of OLD-QAD-JAPAN, suddenly wanted to distance himself from what he said was a losing proposition.

The meeting in San Jose in or around May 1996

76 Given the cash flow problems at QAD-USA and the effect on QAD-USA's ability to keep up with its commitments in Japan (both to OLD-QAD-JAPAN and VEDATECH-JAPAN), SUBRAMANIAN was faced with severe pressure from vendors of OLD-QAD-JAPAN and VEDATECH-JAPAN and the need to keep salary commitment to the remaining staff at OLD-QAD-JAPAN and those at VEDATECH-JAPAN.

77 Furthermore, VEDATECH-JAPAN was just starting to do some of the implementation work relating to the sales of OLD-QAD-JAPAN and it was critical for VEDATECH-JAPAN to ascertain QAD-USA's commitments to its Japanese operations in light of this cash crunch. Will QAD-USA survive this cash crunch?

78 SUBRAMANIAN and VEDATECH-JAPAN also had other business opportunities, but out of a sense of loyalty to its partner QAD-USA, SUBRAMANIAN wished to give QAD-USA a chance to set things right or be candid about its prospects, before making any decisions on abandoning the QAD-related project and related commitments.

79 It is with this in mind that SUBRAMANIAN traveled to San Jose, California in or around May 1996 to meet with DOORDAN. DOORDAN was not very helpful and said that he himself was in great trouble and did not wish to be more involved. DOORDAN reminded SUBRAMANIAN that per the new organization structure, he was no longer responsible for Japan, as he was now a "vertical" manager and that SUBRAMANIAN had to get a go-ahead from KLOPKER in order to fund OLD-QAD-JAPAN or continue with the contract with VEDATECH-JAPAN any further.

80 DOORDAN did tell SUBRAMANIAN that he would be recommending to KLOPKER that OLD-QAD-JAPAN be shut down, given the bleak financial outlook for QAD-USA.

The meetings near Santa Barbara in 1996

81 SUBRAMANIAN was very concerned by the approach of DOORDAN and DOORDAN's attempts to distance himself from QAD-USA's responsibilities towards the Japanese operations. SUBRAMANIAN proceeded to the headquarters of QAD-USA to get this matter resolved by direct discussions with KLOPKER and others.

82 As a first step, SUBRAMANIAN discussed this matter with KLOPKER who assured SUBRAMANIAN that what DOORDAN said was not true and that the cash flow problems at QAD-USA were temporary and that while SUBRAMANIAN should hold the line on costs, it was important for QAD-USA that Japan succeed. KLOPKER encouraged SUBRAMANIAN to invest further in the relationship.

83 Based on this encouragement from KLOPKER, SUBRAMANIAN met with Mr. Dale Akita ("AKITA") who was then the controller at QAD-USA to chart out a plan for handling the cash flow problems at QAD-USA which was affecting the operations of both OLD-QAD-JAPAN and VEDATECH-JAPAN.

Management Changes at QAD-USA

84 Because of these cash flow problems there were many top-level meetings in QAD-USA at this time and a lot of finger pointing was going on. Several top level executives were relieved of their duties or left the company, depending on one's point of view.

85 DOORDAN informed SUBRAMANIAN that KLOPKER blamed the sales executives including DOORDAN for not delivering on the sales projections / forecasts promised and

DOORDAN blamed the new leaders of the administrative and financial "vertical" groups for unnecessarily and prematurely expanding office space and increasing overheads.

86 DOORDAN was very angry especially about the purchase of new office buildings at Ortega Hill in Summerland near Santa Barbara, California in this kind of a period (he said that the Lopkers bought it just because of their personal attraction to the site and as a matter of prestige and not as a matter of good commercial sense), and also the expansion of offices spaces at QAD-USA's offices in Singapore without any sales to back it up.

87 In any event, it was very clear that DOORDAN was very worried about his own position and about being blamed for the financial troubles at QAD-USA.

Authorization of SUBRAMANIAN to use own discretion in handling payments in Japan (as between VEDATECH, OLD-QAD-JAPAN and other vendors)

88 In or around July of 1996, based on the new developments, including the inability of QAD-USA to keep its funding commitments to OLD-QAD-JAPAN and its payment obligations to VEDATECH-JAPAN, QAD-USA decided to change its funding activities regarding OLD-QAD-JAPAN and the payment procedures for any invoices of VEDATECH-JAPAN. Until then, QAD-USA typically paid or authorized any payment to VEDATECH-JAPAN with respect to the ongoing agreements for services etc.

89 Now, in light of the cash crunch and the difficulties SUBRAMANIAN was facing in handling vendors and the employee related issues in Japan for both organizations, SUBRAMANIAN was additionally authorized by QAD-USA, with the concurrence and acceptance of DOORDAN and AKITA, to make payments to VEDATECH-JAPAN for invoices submitted to QAD-USA from funds available at OLD-QAD-JAPAN. This new updated practice was put into effect immediately and SUBRAMANIAN was persuaded not to drop the QAD-related projects on that basis.

90 This was done because it was recognized in that period, with the chronic cash shortages at QAD-USA, that the funds necessary to pay both OLD-QAD-JAPAN expenses and the invoices of VEDATECH-JAPAN were simply not available, and that SUBRAMANIAN was in a difficult position in balancing the priorities of both companies by having accepted QAD-USA's offer to serve as Representative Director of OLD-QAD-JAPAN in addition to his duties as Representative Director of VEDATECH-JAPAN.

91 Thus QAD-USA through AKITA and SUBRAMANIAN agreed that the decision to pay the outstanding accounts payable or other expenses at OLD-QAD-JAPAN or use the scarce funds to pay off some of the outstanding invoices due from QAD-USA to VEDATECH-JAPAN in order to enable VEDATECH-JAPAN to continue to provide services to QAD-USA for the benefit of both QAD-USA and OLD-QAD-JAPAN would henceforth be based on the discretion of SUBRAMANIAN.

92 This arrangement then continued from that time forward, with SUBRAMANIAN, through the staff of OLD-QAD-JAPAN and/ or the reports of ANDERSEN working on the accounting functions of OLD-QAD-JAPAN periodically informing QAD-USA of the exact nature of the disbursements as and when necessary.

93 QAD-USA never once objected to the actual exercise of this discretion until its attempts to improperly terminate SUBRAMANIAN starting in or around July 1997.

Temporary Relief for QAD-USA

94 In this period, some "factoring" company had extended financing in the form of either a loan or a receivables-based line of credit to QAD-USA and QAD-USA was out of crisis mode with respect to cash flow issues. QAD-USA based on this near-death experience decided to prepare immediately for an initial public offering of its stock, (the "IPO") and make management changes to make itself presentable to the financial community.

1 95 Until that time, the Lopkers had steadfastly refused to offer stock to the public. QAD-
2 USA had some kind of an internal program of trading employee owned stock, but this
3 was never a major source of additional financing needed to support its growth.
4

5 "Mike" MOHANDAS and the Management Changes

6 96 QAD-USA hired an outside consultant, one Mr. Mike Mohandas ("MIKE"), to help it
7 prepare for such an IPO and to advise it on revamping its management practices,
8

9 97 MIKE was a retired executive who had held very senior positions at Xerox (?) or some
10 such multinational, and was now acting as a personal advisor to young chief executives
11 such as Karl Lopker who were going through rapid growth and struggling to build an
12 experienced management team.

13 98 MIKE was a straight-shooting action-oriented gentleman who acted quickly to make
14 many changes at QAD-USA. He did use strong language to make his points (some said
15 he was foul-mouthed), and understandably the entrenched management such as
16 DOORDAN did not like him or approve of him one bit.

17 99 Partly because of the recommendations of this consultant, many management changes
18 were brought about during the late 1996 period, most of which were resented by
19 DOORDAN. DOORDAN expressed such resentment of such changes several times to
20 SUBRAMANIAN and others, although it was clear that QAD-USA needed such changes.
21

22 KLOPKER's trip to Japan in 1996

23
24 100 In addition to this, KLOPKER, in order to show his commitment to Japan, also
25 visited Japan in or after the summer of 1996 and attempted to meet with key customers to
26 assure them of QAD-USA's commitment to its subsidiary OLD-QAD-JAPAN and also to
27 assure them of his involvement as a director of OLD-QAD-JAPAN.
28

1 101 During such a trip, KLOPKER, DOORDAN and SUBRAMANIAN visited Kyoto
2 and during dinner at a riverside outdoor restaurant in Kyoto, KLOPKER commended
3 SUBRAMANIAN for his work and commitment and suggested that he needed
4 individuals such as SUBRAMANIAN to be on the board of directors at QAD-USA.
5

6 102 DOORDAN later told SUBRAMANIAN that he did not like that invitation to
7 SUBRAMANIAN as he felt slighted, having worked for KLOPKER for so many years
8 and never having been invited to the board of directors of QAD-USA. In any event, that
9 matter was never pursued further and was overtaken by the confusion caused by
10 DOORDAN in the following months.

11 103 Another outcome of the Japan trip of KLOPKER was that KLOPKER discussed
12 his attempts to put together a comprehensive budgeting system for QAD-USA including
13 all of its subsidiaries. KLOPKER showed SUBRAMANIAN a simulation program (a
14 kind of computer game) based on Microsoft Excel (the spreadsheet program) that he was
15 using to educate managers in the US about the impact of management decisions on issues
16 such as budgets and cash flow.
17

18 104 SUBRAMANIAN was very interested in this and as a result KLOPKER requested
19 SUBRAMANIAN to prepare a detailed long-term business plan and budget for OLD-
20 QAD-JAPAN to grow rapidly under the assumption of significant funding from QAD-
21 USA.

22 105 SUBRAMANIAN agreed to prepare such a plan started preparing such a plan with
23 a three to five year period going forward.
24

25 106 KLOPKER suggested that the plan be ready to be presented to him at the
26 upcoming sales conference in January 1997 and also suggested the SUBRAMANIAN
27 work with DOORDAN to coordinate such a plan with the financial projections already
28 being developed at QAD-USA for the other divisions and subsidiaries.

107 SUBRAMANIAN, partly worried about the financial management of QAD-USA and partly encouraged by their decision to find additional funding through the IPO, etc., decided to start the search for a Japanese executive.

108 Since KLOPKER wanted SUBRAMANIAN to stay for the period of the business plan to be drawn up (three to five years), SUBRAMANIAN compromised and instructed EGON-JAPAN to look for a senior manager who can be groomed to become the President of OLD-QAD-JAPAN at the appropriate time.

109 Thus in 1996, the search for Japanese executives to strengthen the management team of OLD-QAD-JAPAN was started through the Japanese office of the executive placement firm Egon Zehnder ("EGON-JAPAN"). The consultant in charge of the project at EGON-JAPAN was Mr. Obata ("OBATA"). It was thus foreseen that one of the executives so selected would become a candidate to be groomed for the position then held by SUBRAMANIAN.

Plaintiffs hire ANDERSEN as book-keepers for OLD-QAD-JAPAN

110 In or around August of 1996, in an attempt to keep the expenses of OLD-QAD-JAPAN minimal and flexible, all in line with the new realities of the funding situation with QAD-USA, SUBRAMANIAN hired ANDERSEN to assist with the accounting and book-keeping functions of OLD-QAD-JAPAN.

111 During the process of hiring ANDERSEN to do this job, SUBRAMANIAN explained to Mr. Chiba ("CHIBA") a partner at ANDERSEN in its Tokyo office and the individual responsible for supervising the accounting services to be provided to OLD-QAD-JAPAN, the updated status of the relationships between the various parties, especially the importance of the QAD-USA partnership for Plaintiffs' business.

The promises made by CHIBA of ANDERSEN

112 CHIBA specifically assured SUBRAMANIAN that in providing such services ANDERSEN would not undertake any actions that would be harmful to OLD-QAD-JAPAN or its principals and directors, or VEDATECH-JAPAN or SUBRAMANIAN, given the complicated relationship between such parties.

113 This assurance by CHIBA was repeated in July 1997 when a proposed investigation by ANDERSEN of the finances of OLD-QAD-JAPAN created a conflict of interest situation between ANDERSEN providing accounting services and auditing-related services to the same organization. At this time, SUBRAMANIAN decided to continue the services of ANDERSEN in the accounting function in reliance upon such continued assurances by CHIBA.

The management changes wrought at QAD-USA by MIKE and the IPO preparations

114 Major changes were made starting in late 1996 to the top executive ranks at QAD-USA. The Vice President of the consumer products vertical segment resigned or was pushed out, and there was even talk of WHATLEY being sidelined to make way for a new finance team to be hired through Egon Zehnder of San Francisco ("EGON-SFO"). Even PLOPKER, the President was deemed unfit to lead the R&D Division and an outside, Vince Niedzielski was brought in to manage Research and Development efforts.

115 At the same time (late 1996), at QAD-USA, DOORDAN was moved to a position with lesser responsibilities, much to his chagrin. Specifically, DOORDAN was relieved of his duties as the worldwide head of the "vertical" segment for the electronics market, and given a backwater position as VP of emerging markets or some such position. This included regions such as Brazil where the sales volume was not considered large enough for the main "vertical" managers to spend a lot of time on.

1 116 DOORDAN, in or around the end of 1996 complained several times to
2 SUBRAMANIAN that KLOPKER was not treating old loyal employees such as
3 DOORDAN fairly and that he, DOORDAN was not being appreciated for the difficult
4 tasks he had accomplished for QAD-USA. DOORDAN was especially upset with the
5 downgrading of his own responsibilities and expressed his concern that he was being
6 sidelined in favor of untested newcomers and that it was DOORDAN's opinion that
7 MIKE did not know what he was doing.

8
9 The meetings in San Jose / near Santa Barbara in late 1996

10 117 In or around November 1996, SUBRAMANIAN had an initial draft of his
11 business plan and traveled to San Jose to meet with MIKE regarding the plans for Japan.

12
13 118 MIKE, DOORDAN and SUBRAMANIAN met in the conference room at the
14 offices of QAD-USA in San Jose, California. MIKE complimented SUBRAMANIAN on
15 his plan but made various suggestions for improving the presentation. He especially
16 pointed out to SUBRAMANIAN that in addition to the analysis of the numbers,
17 SUBRAMANIAN needed to arrange his market research in the form of a "story" that
18 senior executives can clearly understand. He said that while it was possible for him to
19 clearly understand such a "story" from talking with SUBRAMANIAN, he wanted that
20 captured on paper, in the plan and in the accompanying presentations and slide shows.

21 119 In addition, MIKE openly insulted DOORDAN in the meeting, telling him that
22 DOORDAN was no longer necessary for the management of Japan and it was time for the
23 "younger generation" to take over. DOORDAN was livid about this comment and told
24 SUBRAMANIAN later on that MIKE was not liked by anybody and DOORDAN did not
25 understand why KLOPKER put up with him and that DOORDAN was sure that MIKE
26 would eventually upset KLOPKER

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1 120 SUBRAMANIAN proceeded to travel to the QAD-USA headquarters near Santa
2 Barbara and received further commitments from KLOPKER that the business plan being
3 developed by SUBRAMANIAN would be supported and that SUBRAMANIAN should
4 plan on personally being in this arrangement with QAD-USA and OLD-QAD-JAPAN for
5 at least the period of the plan and see it through to success.

6 121 During these meetings near Santa Barbara (in the Ortega Hills office in
7 Summerland), MIKE brought up this new idea of his that SUBRAMANIAN should
8 merge VEDATECH-JAPAN with QAD-USA and SUBRAMANIAN should join QAD-
9 USA. MIKE said that SUBRAMANIAN would get stock options going into the IPO and
10 would be well rewarded. He said that he would recommend that to KLOPKER and that
11 he wanted to see someone such as SUBRAMANIAN leading the effort as an insider for
12 the long-term in Japan and not as a partner that might walk away from QAD-USA.

13 122 SUBRAMANIAN told MIKE that he would consider it but that it was not
14 consistent with the agreement between the parties and that it would be major departure
15 from the understanding between the parties for the (then) past three years or more.

16 123 In any event, MIKE and SUBRAMANIAN decided to discuss this matter further at
17 the upcoming sales conference in January 1997. SUBRAMANIAN met with other
18 executives such as AKITA and then left to go back to Japan.

20 TAKATORI and NRI's interest in MFG/PRO

21 124 Upon information and belief, in or around the second half of 1996 or early 1997,
22 NRI-HKG, and its executive TAKATORI became interested in the service business
23 relating to the MFG/PRO product of QAD-USA. TAKATORI was negotiating on behalf
24 of both NRI-HKG and NRI-JAPAN. In addition to developing a relationship between
25 NRI-HKG and QAD-USA, TAKATORI started to promote NRI-JAPAN as a potential
26 partner of QAD-USA.
27

DOORDAN's renewed interest in OLD-QAD-JAPAN

125 Given the turn of fortunes at QAD-USA for the better, and given KLOPKER's strong commitment to Japan and MIKE's enthusiasm for the Japanese market and MIKE's personal support for an expanded budget for Japan, DOORDAN suddenly became very interested in renewing his control over the operations in Japan.

126 In or around December 1996, DOORDAN expressed an interest to SUBRAMANIAN in becoming President or Representative Director of OLD-QAD-JAPAN. DOORDAN's stated reasons for seeking this position was his unhappiness with what he stated as being sidelined at QAD-USA and what he termed as the excessive influence of consultants such as MIKE on KLOPKER.

127 DOORDAN also told SUBRAMANIAN that he was planning on being an executive consultant after he left QAD-USA and he had good asia-pacific experience for most regions except Japan. It was critical, he said that he could put something good about Japan on his resume.

128 SUBRAMANIAN was generally supportive of this plan of DOORDAN, not knowing that DOORDAN was planning on accomplishing this at the expense of SUBRAMANIAN and VEDATECH-JAPAN and that DOORDAN, unfortunately, considered SUBRAMANIAN as a road block to the achievement of DOORDAN's personal ambitions and goals.

129 Until this point in time, SUBRAMANIAN generally had a good working relationship with DOORDAN. In fact, SUBRAMANIAN, upon request from DOORDAN, even wrote a recommendation / evaluation for DOORDAN speaking highly of him in support of his evaluation by the E-team. BUT, going forward from this point in time, because of DOORDAN's underhanded and harmful tactics,, SUBRAMANIAN found himself always on the defensive about one form of subterfuge or another.

1 The tragic, untimely and early death of MIKE

2
3 130 MIKE used to fly his own plane between his home south of Los Angeles and to
4 various places such as Santa Barbara and San Jose to meet with QAD-USA's executives.
5 One foggy day in December 1996, when MIKE was piloting his plane to Santa Barbara, it
6 crashed for reasons unknown to Plaintiffs and he met with his tragic death.

7 131 SUBRAMANIAN called DOORDAN to find out more details of this. While
8 DOORDAN expressed sympathy, he also said that unfortunate as it was, it meant that his
9 (DOORDAN's) problems with what DOORDAN said were arbitrary management
10 changes would be over now. DOORDAN actually seemed relieved.

11 132 Without a powerful outsider such as MIKE moderating the influence of
12 DOORDAN, DOORDAN went back to his plan of trying to topple SUBRAMANIAN
13 from the position at OLD-QAD-JAPAN so that he can find a way to redeem himself in
14 the QAD-USA organization and get back to a position of some importance.

15
16 133 KLOPKER was loyal to his team of executives from the start-up days of QAD-
17 USA and only a strong personality such as MIKE had overcome that. After the untimely
18 death of MIKE, KLOPKER was dependent more than ever on the familiar and the
19 comfortable and the stars of executives such as DOORDAN began to rise again.

20 DOORDAN resorts to underhanded activities to undermine SUBRAMANIAN

21
22 134 Starting from or around December 1996, DOORDAN, without informing
23 SUBRAMANIAN, also started contacting employees of OLD-QAD-JAPAN and other
24 individuals and entities in Japan with the intention of having them help DOORDAN
25 convince KLOPKER and QAD-USA in replacing SUBRAMANIAN with DOORDAN or
26 with someone that DOORDAN chooses and thus could control.

1 135 DOORDAN's activities included encouraging some such individuals contacted
2 (such as Takahashi or Nagae of OLD-QAD-JAPAN) to either start an independent search
3 for a new President of OLD-QAD-JAPAN to replace SUBRAMANIAN or be candidates
4 themselves for such a position in the near future.

5
6 136 In spite of DOORDAN's attempted secrecy with such attempts on his own part,
7 news of his efforts were related to SUBRAMANIAN by several sources in Japan, one of
8 them being OBATA of EGON-JAPAN, who, at that time was upset at having a parallel
9 "search" going on while he assumed that he had the exclusive contract to do the same.

10 The Ojai sales conference of QAD-USA in January 1997

11
12 137 In January 1997, QAD-USA organized a sales conference in Ojai, California (the
13 "Ojai Conference"), which SUBRAMANIAN attended.

14 138 During this Ojai conference, SUBRAMANIAN had a meeting with KLOPKER to
15 express SUBRAMANIAN's concerns with DOORDAN's activities in Japan and the
16 potential embarrassment for all the parties in a protocol-conscious society such as Japan
17 (with the concerns of OBATA being explained to KLOPKER).

18
19 139 KLOPKER assured SUBRAMANIAN that DOORDAN would not undertake such
20 activities and suggested that this was a possible misunderstanding on the part of
21 SUBRAMANIAN and that SUBRAMANIAN should not worry about these matters and
22 proceed on with the tasks requested by KLOPKER regarding the business plan and
23 related activities (such as increasing sales to Japanese companies outside of Japan etc.)

24 140 KLOPKER further committed to SUBRAMANIAN that he agreed that
25 SUBRAMANIAN would serve as Representative Director of OLD-QAD-JAPAN until
26 SUBRAMANIAN and KLOPKER (QAD-USA) could agree on a proper management
27

1 team for OLD-QAD-JAPAN and after OLD-QAD-JAPAN was made strong enough to be
2 independent on its own (as opposed to being dependent on QAD-USA for funds).
3

4 141 Said meeting between KLOPKER and SUBRAMANIAN took place in the early
5 afternoon in a small green clearing to the side of the main lecture halls where the
6 principal meetings were taking place.

7 142 Several hours later, SUBRAMANIAN presented the latest version of the business
8 plan for OLD-QAD-JAPAN, as requested several months earlier by KLOPKER, to
9 KLOPKER, DOORDAN and others (such as Vince Niedzielski, the new R&D manager
10 and David Burns, the marketing manager). The plan was well received.
11

12 Follow-up to the Ojai Conference

13 143 In the weeks following the Ojai conference, SUBRAMANIAN and KLOPKER
14 talked over the telephone several times. KLOPKER instructed SUBRAMANIAN to start
15 integrating the budgetary requirements of the new plan with the overall plan then being
16 developed at the headquarters in California.
17

18 144 Consistent with his earlier request that the business plan be coordinated with
19 DOORDAN (from his Japan trip in the summer of 1996), KLOPKER assigned
20 DOORDAN to be the person to coordinate such information from SUBRAMANIAN,
21 with the work being undertaken at the headquarters. DOORDAN was supposed to keep
22 in close touch with the new budgets being prepared in California and help integrate the
23 plan prepared by SUBRAMANIAN into the overall budgetary scheme.

24 DOORDAN intensifies activities, notwithstanding KLOPKER's observations

25 145 Instead, after the Ojai conference, DOORDAN intensified his activities trying to
26 exert indirect control over the operations of OLD-QAD-JAPAN. In order to assist
27 himself in these efforts, DOORDAN intensified contacts with TAKATORI, NRI-HKG,
28

1 NRI-JAPAN, and other companies or agents of companies that were potential
2 competitors of VEDATECH-JAPAN (such as Toyo Joho Systems), or were individuals
3 interested in obtaining some senior position at OLD-QAD-JAPAN (including some that
4 had been rejected both by EGON-JAPAN and by SUBRAMANIAN for such positions).

5
6 **Replacement of DOORDAN with SPRUIT as coordinator for Japan**

7 146 SUBRAMANIAN informed KLOPKER of these actions and activities by
8 DOORDAN, and reiterated his serious concerns regarding the same.

9
10 147 KLOPKER agreed that this was becoming a problem issue and agreed to appoint
11 Hans Spruit ("SPRUIT") to work with Plaintiffs on matters relating to QAD-USA's
12 interests in the affairs of OLD-QAD-JAPAN and the agreements between QAD-USA and
13 VEDATECH-JAPAN.

14 148 KLOPKER also agreed that effective from the date that he formalized such new
15 arrangements (which he said he would do soon), DOORDAN would no longer be
16 responsible on the QAD-USA side for Japan.

17
18 **Discussions regarding reducing oral agreements to writing**

19 149 In this same period (early 1997), QAD-USA as part of its preparations for the IPO,
20 informed VEDATECH-JAPAN that, as part of the feedback received from the due
21 diligence efforts of consultants hired to help it prepare for the IPO, there was identified
22 by such consultants, a need to memorialize the various oral agreements between QAD-
23 USA and VEDATECH-JAPAN in a formal written agreement.

24
25 **Doordan's threats**

26 150 In or around March 1997, DOORDAN traveled to Japan and met with
27 SUBRAMANIAN over a period of several days.

1 151 Near the end of this trip, DOORDAN informed SUBRAMANIAN that he has
2 become aware of KLOPKER's unhappiness with himself and that he knew about the
3 proposed transfer of responsibilities to SPRUIT.

4 152 He warned SUBRAMANIAN that unless SUBRAMANIAN recommended to
5 KLOPKER that DOORDAN be the new President and Representative Director, or an
6 equivalent position at OLD-QAD-JAPAN, DOORDAN would cause serious damage to
7 the relationship between VEDATECH-JAPAN and (SUBRAMANIAN) and QAD-USA.

8
9 153 DOORDAN further warned SUBRAMANIAN that failure to cooperate with
10 DOORDAN would mean loss of both the direct and indirect service business that was
11 ongoing and forthcoming to VEDATECH-JAPAN under the agreement(s) between QAD-
12 USA and VEDATECH-JAPAN and SUBRAMANIAN.

13 154 When asked why he was asking SUBRAMANIAN to undertake such activities and
14 not proposing such matters to KLOPKER himself, DOORDAN mentioned to
15 SUBRAMANIAN that he (DOORDAN) considered it unfortunate that KLOPKER would
16 place more faith in SUBRAMANIAN and SPRUIT but not (in DOORDAN's opinion) in
17 an old loyal employee such as himself.

18
19 The 1997 (second) Asia Pacific Sales conference in Bali

20 155 In or around March of 1997, in a meeting at Bali, Indonesia, KLOPKER formally
21 appointed SPRUIT to become the person in charge of representing QAD-USA in all
22 negotiations with both Plaintiffs and other parties such as EGON-JAPAN. DOORDAN
23 was removed from such responsibilities.

24
25 156 At this conference, KLOPKER reaffirmed his and QAD-USA's commitments to
26 the oral agreements with VEDATECH-JAPAN and SUBRAMANIAN and the
27 commitments made by KLOPKER during the Japan trip in 1996, and their commitment to
28 the business plan presented to KLOPKER at the Ojai conference.

1 157 SPRUIT and SUBRAMANIAN met at the Bali conference after this endorsement
2 by KLOPKER and agreed to start working on the written versions of the various
3 agreements regarding VEDATECH-JAPAN, SUBRAMANIAN and the Japan business in
4 general.

5 158 SPRUIT indicated that he will be traveling to Japan shortly and also invited
6 SUBRAMANIAN to come to Amsterdam (where SPRUIT was based,) to follow-up on
7 the various complex issues. In addition, upon his return to Europe, SPRUIT sent
8 SUBRAMANIAN a sample distributor agreement that he had used with Origin (a
9 subsidiary of Philips) and a large partner of QAD-USA, as an initial reference to the kind
10 of language that needed to be drawn up.

11
12 **Re-Emergence of DOORDAN as negotiator-in-chief**

13 159 Soon after this endorsement by KLOPKER and the agreement between SPRUIT
14 and SUBRAMANIAN to follow-up, DOORDAN returned to San Jose and after a week
15 or so, telephoned SUBRAMANIAN to inform him that SUBRAMANIAN had to deal
16 with DOORDAN after all, as he had convinced SPRUIT to "delegate" to himself
17 (DOORDAN) the duties assigned to SPRUIT by KLOPKER.

18
19 160 SUBRAMANIAN was quite shocked by this but did not know how to react to this,
20 and decided to bring this up with SPRUIT at their next face-to-face meeting.

21
22 **Formalization of the extension of the term of SUBRAMANIAN**

23 161 In or around March 1997 SUBRAMANIAN and KLOPKER decided formally that
24 SUBRAMANIAN should be elected to another two-year term at OLD-QAD-JAPAN in
25 the position of Representative Director and President.

26 162 It should be remembered that QAD-USA (acting through KLOPKER) and
27 SUBRAMANIAN were the two shareholders of OLD-QAD-JAPAN and could and
28

1 would decide amongst themselves at the annual shareholder's meeting as to the
2 composition of the board of directors.

3 163 KLOPKER and SUBRAMANIAN also agreed that given the problems that
4 DOORDAN had in working smoothly with SUBRAMANIAN it is best that DOORDAN
5 be demoted from a full director.
6

7 164 But in consideration of DOORDAN's feelings, KLOPKER and SUBRAMANIAN
8 decided to give him the largely ceremonial post in a Japanese K.K. company of an
9 internal "auditor".

10 165 Upon such agreement between the majority shareholder QAD-USA (through
11 KLOPKER) and the minority shareholder SUBRAMANIAN, KPMG Peat-Marwick in
12 Japan, which was selected by QAD-USA in or around early 1995 to handle such formal
13 matters such as the holding and registration of shareholders' meetings and other corporate
14 matters of OLD-QAD-JAPAN, undertook the necessary steps to have this formally
15 registered with the Japanese governmental authorities (such as the Legal Affairs Bureau
16 of Yokohama), as they had done in 1995 and as they did with various other corporate
17 formalities required to be performed on behalf of OLD-QAD-JAPAN in accordance with
18 the laws and regulations of Japan.
19

20 QAD-USA approved of, was fully aware of and was, and is, in possession of
21 all documents relating to the renewal of SUBRAMANIAN's term
22

23 166 Shortly thereafter, SUBRAMANIAN received a request from QAD-USA (from
24 one Sheila Blaise (?)), for copies of documents that related to the official status of OLD-
25 QAD-JAPAN, its board of directors and other related information, with the reason for the
26 request being the need to have such documents in preparation for the IPO.

27 167 SUBRAMANIAN had such documents sent over from KPMG Peat Marwick
28 Japan, and then sent the same over to QAD-USA.

1 168 SUBRAMANIAN did not hear any objections whatsoever from QAD-USA to
2 such documents after receipt by QAD-USA.

3 169 It was only later on (in or after October 1997), during the course of one of several
4 legal proceedings that started between the parties that QAD-USA started criticizing such
5 renewal of the term of SUBRAMANIAN and slowly built it up to the current allegations
6 of fraud.

7
8 170 QAD-USA approved of and was aware of the changes formalized by KPMG-Japan
9 with respect to the appointment of SUBRAMANIAN to the two-year term in 1997.

10 EGON-JAPAN's concerns about the improper activities of DOORDAN
11

12 171 In 1997, EGON-JAPAN continued their search for executive team members for
13 OLD-QAD-JAPAN from whom a potential president or Representative Director for
14 OLD-QAD-JAPAN could be groomed.

15 172 In this period, OBATA of EGON-JAPAN expressed increasing concern about the
16 continuing activities of DOORDAN in Japan (which, he told SUBRAMANIAN was
17 continuing to cause him considerable embarrassment), and urged SUBRAMANIAN to
18 take some action to straighten this out with KLOPKER so that EGON-JAPAN could
19 present a unified front to the potential candidates.
20

21 Meeting with EGON-SFO to seek help regarding activities of DOORDAN
22

23 173 Upon advice from EGON-JAPAN, SUBRAMANIAN met with a representative of
24 Egon Zehnder in San Francisco (referred to herein as "EGON-SFO" and with said meeting
25 taking place in San Francisco) regarding the threats and actions by DOORDAN.

26 174 EGON-SFO, in the course of the meeting expressed surprise at the scale of the
27 underground and clandestine efforts by DOORDAN in Japan, and told SUBRAMANIAN
28 that what they had heard from OBATA of EGON-JAPAN worried them.

1 175 EGON-SFO initially assured SUBRAMANIAN that they would help
2 SUBRAMANIAN meet with Barry Anderson ("BARRY") or Dennis Raney ("RANEY")
3 of QAD-USA (both of whom were placed in QAD-USA during that period by EGON-
4 SFO as part of the IPO preparations and/or the related management changes) in order to
5 gain their support in possibly bringing an end to DOORDAN's activities.

6 176 Furthermore, EGON-SFO informed SUBRAMANIAN that they had heard from
7 Dennis Raney and/or Barry Anderson that DOORDAN was not considered to be in a
8 strong position in the executive line-up at QAD-USA and that it was their opinion that
9 this matter would be looked upon sympathetically by RANEY or BARRY.

10 177 EGON-SFO also told SUBRAMANIAN that even though KLOPKER did not
11 consider DOORDAN to be fit for a senior position, he (KLOPKER) nevertheless seemed
12 reluctant to fire DOORDAN out of a sense of loyalty.

13
14
15 No help from Dennis Raney or Barry Anderson

16 178 SUBRAMANIAN was unable to meet with Dennis Raney and it was only in
17 September 1997 that SUBRAMANIAN met with BARRY when he came over to Japan to
18 meet with EGON-JAPAN.

19 179 During a follow-up telephone call with EGON-SFO, the EGON-SFO consultant
20 told SUBRAMANIAN that after a conversation with Mr. Raney and/or Mr. Anderson he
21 was concerned that this was a larger problem than he could get into and wanted to be
22 excused from trying to help SUBRAMANIAN as committed earlier.

23 180 He mentioned that Mr. Raney and Mr. Anderson thought that it would be difficult
24 for them to convince KLOPKER about the seriousness of DOORDAN's activities and
25 that it may be too sensitive a matter for them to deal with, given what they said were non-
26 committal responses from KLOPKER to their initial test balloons on this matter.
27
28

DOORDAN's attempts to compromise employees at VEDATECH-JAPAN

181 Beginning in or about March 1997, DOORDAN, directly or through others, contacted employees of VEDATECH-JAPAN for the purpose of denigrating SUBRAMANIAN and VEDATECH-JAPAN and / or trying to hire them away from VEDATECH-JAPAN.

182 DOORDAN instructed several individuals in QAD-USA, including Kanehara (employed by DOORDAN's protege Bezy in Hong Kong) and John Gould to contact various employees of VEDATECH-JAPAN and try to induce them to join QAD.

March / April 1997 Meeting with SPRUIT and DOORDAN in California

183 In or around early April of 1997, SUBRAMANIAN traveled to California to meet with SPRUIT regarding (as it was explained to SUBRAMANIAN by DOORDAN) memorializing the various oral agreements into a comprehensive written agreement.

184 Having brought SUBRAMANIAN to California under this pretext, DOORDAN, in the presence of SPRUIT unsuccessfully tried to coerce SUBRAMANIAN to quit his position as Representative Director of OLD-QAD-JAPAN.

The theory of "conflict of interest"

185 Since DOORDAN was officially not responsible for interfacing with SUBRAMANIAN (by the prior decision of KLOPKER), SPRUIT led the discussion.

186 SPRUIT tried to convince SUBRAMANIAN that what they really wanted was not to terminate the relationship with VEDATECH-JAPAN and SUBRAMANIAN but that because of the impending IPO, QAD-USA had to act "professionally" in all its transactions. According to SPRUIT he could not negotiate the written version of the current agreement with VEDATECH-JAPAN and additions reflecting the agreement between the parties as to the long-term relationship between VEDATECH-JAPAN and

1 QAD-USA as long as SUBRAMANIAN was Representative Director of OLD-QAD-
2 JAPAN since SUBRAMANIAN was also the Representative Director of VEDATECH-
3 JAPAN and this according to SPRUIT would create a situation where SUBRAMANIAN
4 would be negotiating with himself. Thus, reasoned SPRUIT, the people doing due
5 diligence for the IPO would never accept such a transaction and hence SUBRAMANIAN
6 should first resign, and then negotiate the details of memorializing the prior agreements
7 along with additional agreements for a long-term relationship with QAD-USA.

8 187 SUBRAMANIAN told SPRUIT that while the argument seemed clever, it did not
9 hold water under close scrutiny, as the agreement being formalized was between
10 VEDATECH-JAPAN and QAD-USA and SUBRAMANIAN had no official position at
11 QAD-USA. SUBRAMANIAN explained that OLD-QAD-JAPAN itself had to negotiate
12 at arms length with QAD-USA for tax and regulatory purposes and there was no reason
13 to use this excuse to try to replace SUBRAMANIAN with DOORDAN at this stage.

14
15 The dummy "resignation letter" prepared by DOORDAN

16 188 In this meeting (at the headquarters of QAD-USA in its Summerland offices at
17 Ortega Hill), DOORDAN had prepared a sample "voluntary" resignation letter to be
18 signed by SUBRAMANIAN and also a proposed email that he would be sending,
19 informing everyone at QAD-USA and affiliates about the proposed change in the
20 management structure.

21
22 189 In this meeting, DOORDAN also informed SUBRAMANIAN that it would not be
23 possible to make progress in memorializing the oral agreements as agreed before, unless
24 SUBRAMANIAN resigned his position at OLD-QAD-JAPAN and permitted
25 DOORDAN to replace SUBRAMANIAN in that position.

26 190 During this meeting, SUBRAMANIAN asked DOORDAN and SPRUIT whether
27 KLOPKER approved of these actions by them. Unsatisfied with their evasive answers
28

1 (although in the affirmative), SUBRAMANIAN approached KLOPKER in his office
2 which was several rooms away and expressed his shock and disbelief at what DOORDAN
3 and SPRUIT were proposing to SUBRAMANIAN.

4 KLOPKER denies he sanctioned or requested such efforts by DOORDAN

5
6 191 KLOPKER assured SUBRAMANIAN that DOORDAN and SPRUIT should not
7 have done what they did and that his only intention was to have them work out and
8 formalize all the relationships based on oral agreements, so that QAD-USA was not
9 subject to criticism for not having proper procedures for the same, in light of the
10 upcoming IPO.

11 192 KLOPKER suggested that SUBRAMANIAN should proceed back to Japan
12 without further discussions with DOORDAN and SPRUIT and he will make sure that
13 these two would not continue in that vein and approach the problem differently.

14
15 193 Specifically KLOPKER assured SUBRAMANIAN that he was committed to
16 keeping QAD-USA's promises regarding the oral agreements and the partnership,
17 including the commitments regarding the management of OLD-QAD-JAPAN and his
18 commitment to the appointment of SUBRAMANIAN for the two-year term.

19 DOORDAN's facsimile disposing of the original March 1994 agreement

20
21 194 In or around April 16, 1997, DOORDAN sent a facsimile to the attention of
22 SUBRAMANIAN in Japan, purporting to state his position that the written agreement
23 was terminated. In this letter DOORDAN purported to terminate the March 1994
24 Agreement although that agreement in its original form had already expired.

25 195 SUBRAMANIAN, rather surprised by this in the light of the prior conversation
26 with KLOPKER, contacted KLOPKER by telephone.
27

1 196 KLOPKER explained that this was just a mere formality because of the
 2 preparations for the IPO, and that he had instructed SPRUIT to work with
 3 SUBRAMANIAN in formalizing a proper and comprehensive set of agreements with
 4 SUBRAMANIAN and VEDATECH-JAPAN.

5 197 KLOPKER further assured SUBRAMANIAN that it was essential in preparing for
 6 the IPO that the "expired" status of the old written agreement be recognized / formalized
 7 and the existing and additional new oral agreements be accurately captured on paper.
 8

9 198 SUBRAMANIAN was assured that before the stated July 31, 1997 deadline for the
 10 purported termination of the March 1997 written agreement, a new written agreement
 11 memorializing the current understanding of the parties would be in place.
 12

13 Defendant LAI FOON LEE enters the picture

14 199 LEE was hired by QAD-USA in or around the early part of 1997 as part of QAD-
 15 USA's efforts to strengthen its management team in preparation for its IPO.
 16

17 200 From information and belief, the following background facts are averred:

18 200.01 that LEE worked in Singapore for Hewlett-Packard ("HP") at some
 19 point in time before joining QAD-USA; AND
 20

21 200.02 at some point in time (either at HP or otherwise) worked directly for or
 22 with Mr. Dennis Raney, who was her supervisor at QAD-USA; AND
 23

24 200.03 at some point in time (either at HP or otherwise) had a personal and
 25 professional working relationship with Arthur Andersen and certain individuals at
 26 Arthur Andersen.

27 200.04 EGON-SFO hired RANEY first and then RANEY hired LEE and/or
 28 brought her along with him in joining QAD-USA.

Lai Foon Lee's Position in QAD-USA

201 Before the team of Mr. Dennis Raney (as CFO) and Lai Foon Lee (working for him as controller), were brought in to assist with the IPO as described above, the finance department at QAD-USA was managed by one Ms. Barbara Whatley ("WHATLEY").

202 Ms. Whatley was a personal friend, and from information and belief, a college roommate or fellow student of PLOPKER (Pamela Lopker), the President and (co-) founder of QAD-USA at the University of California at Santa Barbara.

203 WHATLEY exerted considerable influence on PLOPKER and was widely resented inside the management team of QAD-USA, most of which reported to KLOPKER, who was the actual operational manager (CEO) of QAD-USA.

204 For example, DOORDAN consistently expressed his ill-will and disapproval of WHATLEY to SUBRAMANIAN and many others inside QAD-USA.

205 It was widely felt and commented in and among the management circles at QAD-USA (especially DOORDAN) that WHATLEY was not experienced enough to lead QAD-USA into the IPO and that she would be a liability when presenting QAD-USA to the investment bankers and other members of the financial community when doing the pre-IPO "road show" and that she was "too close for comfort" with PLOPKER.

206 Although SUBRAMANIAN had met WHATLEY only a few times, at which times the interactions were pleasant, he was well aware of the politics of the management shuffle going on at QAD-USA at this time.

207 AKITA (Mr. Dale Akita) worked directly for WHATLEY before the pre-IPO management changes.

208 It is in this context that the arrival of Mr. Raney and LEE into QAD-USA was welcomed by individuals such as DOORDAN who had an axe to grind with WHATLEY.

1 209 DOORDAN related to SUBRAMANIAN with some satisfaction the fact that
2 WHATLEY had been given a ceremonial tax-related position and that RANEY and LEE
3 were now the center of finance related powers in QAD-USA.

4 210 DOORDAN had always complained that many or most of his budget requests and
5 proposals had been compromised because of his inability to get past WHATLEY or what
6 he considered as the undue and unfair influence of WHATLEY on PLOPKER which he
7 said prevented him from being more forceful with the Lopkers (PLOPKER and
8 KLOPKER). DOORDAN was happy to see WHATLEY being sidelined.

9 211 It should be noted that QAD-USA was run as a family firm and most of the
10 managers were keen on pleasing or being in the good books of the Lopkers for their own
11 survival or advancement within the organization. DOORDAN especially was very aware
12 of and conscious of this. DOORDAN was always very careful not to upset the Lopkers
13 and was always trying to please them.

14
15
16 The convergence of the personal agendas of DOORDAN and LEE

17 212 Thus, when LEE was hired into QAD-USA, DOORDAN and LEE had a common
18 goal of trying to neutralize whatever residual influence they thought WHATLEY had
19 with the Lopkers.

20 213 LEE had to overcome the shadow of WHATLEY in order to establish herself in
21 QAD-USA and DOORDAN saw LEE as a tool to get back at WHATLEY and also gain
22 budgetary and other powers through cooperation with LEE.

23 214 Since OLD-QAD-JAPAN was still not making money and needed large amounts
24 of further investments before it would turn the corner, it was critical for DOORDAN to
25 be able to get the support of the new finance team, if his dreams of displacing
26 SUBRAMANIAN and having a successful reign at OLD-QAD-JAPAN were to be
27 realized.

1 LEE's efforts to find fault with the financial systems in place in 1997

2 215 One way that LEE saw in neutralizing WHATLEY was to show to the Lopkers
3 how badly QAD-USA's financial affairs had been managed until then and how she, LEE
4 was responsible for cleaning it up and contributing to a successful IPO.
5

6 216 This would help promote her at the expense of WHATLEY and independent of the
7 issue with WHATLEY show herself (LEE) as a go-getter and provide for her (LEE's)
8 career advancement inside QAD-USA.

9 217 It is in this context that LEE, in the advancement of her own position inside QAD-
10 USA, in her attempts to quickly demonstrate her superiority over the previous team of
11 WHATLEY and in her overzealousness in accomplishing the same went overboard on
12 trying to find fault in various departments inside QAD-USA and its subsidiaries such as
13 QAD-AUSTRALIA and QAD-JAPAN.
14

15 218 DOORDAN was quick to catch on to these efforts of LEE and commented once to
16 SUBRAMANIAN that LEE was on a tear to make all the regions look bad and that he
17 was lucky he was no longer responsible for the finances of QAD-USA's Hong Kong
18 offices. DOORDAN was aware of LEE's need and stated goals of trying to impute and
19 then "fix" problems with various subsidiaries, especially OLD-QAD-JAPAN.

20 219 When DOORDAN and LEE discussed QAD-JAPAN both of them saw an easy
21 way to advance their own personal goals in making Plaintiffs look bad and promote
22 themselves as major contributors to the IPO process. It also would give them status in the
23 eyes of the Lopkers, and gain power and position in the post-IPO executive line up.
24

25 220 DOORDAN wished to be reinstated in an important position (specifically the head
26 of OLD-QAD-JAPAN) after being sidelined in the management shuffle (starting with the
27 changes brought it by MIKE), and LEE, for her part, wished to neutralize WHATLEY
28 and also promote her own interests and advancement inside QAD-USA.

1 DOORDAN and LEE decide to sacrifice Plaintiffs for their personal goals

2 221 Plaintiffs were an easy and expendable target as DOORDAN was already laying
3 the groundwork by working with various elements in Japan to undermine Plaintiffs.
4 DOORDAN already had a conspiracy going with TAKATORI and the NRI group of
5 companies. With LEE, now DOORDAN had another powerful tool to attack Plaintiffs.
6

7 222 In addition DOORDAN needed someone to help him weaken support for Plaintiffs
8 with KLOPKER, as he had until then failed to do the same on his own.
9

10 223 Both DOORDAN and LEE had a problem with this plan because of KLOPKER's
11 continued support for SUBRAMANIAN and Plaintiffs. It was very important that they
12 somehow found a very convincing way of attacking the credibility of Plaintiffs. With
13 ANDERSEN all the pieces of the puzzle started to fit in for these two conspirators.

14 ANDERSEN was the tool that LEE wished to use to dislodge KPMG and
15 hence marginalize the influence of WHATLEY with the Lopkers
16

17 224 WHATLEY was the one that chose KPMG to be the auditor for QAD-USA and
18 was loyal to KPMG both in the US and in Japan.

19 225 In Japan, whereas Plaintiffs had used ANDERSEN to help set up QAD-JAPAN
20 and had ANDERSEN's partners on the board of directors for a while, WHATLEY (in or
21 around early 1995) discharged the appointment of ANDERSEN and replaced them with
22 KPMG Japan.
23

24 226 Thus, when LEE came into the picture, it was natural for her to try to find a way to
25 get rid of KPMG who were friendly to WHATLEY and have auditors that she would
26 control. If LEE could show that KPMG had not done a good job and that a new team
27 from ANDERSEN was necessary to fix the problems that LEE could say were caused by
28

1 KPMG, then the story would fit LEE's goal of showing how WHATLEY had not
2 managed the financial affairs of QAD-USA and subsidiaries properly.

3 227 It is not known, without further discovery, if ANDERSEN provided any other
4 personal benefits to LEE or DOORDAN in trying to develop their business with QAD-
5 USA.

6
7 228 Thus, in the early part of 1997, LEE (along with her supervisor Mr Dennis Raney)
8 had convinced QAD-USA to hire ANDERSEN to undertake some "internal functions"
9 relating to accounting and financial controls and related areas.

10 229 It is thus that LEE intended for ANDERSEN to act as a counterweight to KPMG
11 which she saw as loyal to the outgoing CFO, Ms. Barbara WHATLEY (who was still
12 close to the Lopkers and stayed on in a senior position), and a way to increase her own
13 influence and position within the management ranks of QAD-USA.

14
15 **The Conspiracy between DOORDAN, LEE and ANDERSEN is born**

16 230 It is for these reasons that the conspiracy between DOORDAN, LEE and
17 ANDERSEN, and some DOES 1-50 was hatched. Each one of the above had a personal
18 gain in sacrificing the relationship Plaintiffs had with QAD-USA.

19
20 231 Thus, in or around June 1997, DOORDAN and LEE made plans to try to force
21 SUBRAMANIAN into resigning his position at OLD-QAD-JAPAN.

22 232 This would benefit DOORDAN by making it easy for him to install himself as the
23 head of OLD-QAD-JAPAN, and would benefit LEE in promoting herself as the savior of
24 problems created by WHATLEY and quickly gain power and financial gains inside a
25 company expected to grow quickly through an IPO.
26
27
28

1 233 ANDERSEN, in turn would be able to displace KPMG in providing various
2 accounting and related services on a worldwide basis to a company about to go public,
3 and presumably on a high growth path.

4 234 It is to be noted that most of the big six (or five or four or whatever the number is)
5 accounting firms, in the 1997 period were aggressively expanding their "consulting"
6 business as a way to make up for flagging revenues from the traditional audit
7 engagements.

8 235 It was also very profitable to sell such "consulting" services when there was
9 already a captive customer acquired in the normal audit business. The managers of such
10 consulting business were under tremendous pressure to expand their business at all costs.

11 236 Given that LEE was plugging for ANDERSEN inside QAD-USA, ANDERSEN
12 was eager to please LEE and her co-conspirator DOORDAN. ANDERSEN saw
13 Plaintiffs as a small business run by an individual, and saw them as expendable in their
14 quest for capturing the business of a software company going public in the US.

15
16
17 Meeting in Yokohama in June 1997

18 237 In June 1997, DOORDAN, LEE and others traveled to Japan to meet with
19 SUBRAMANIAN, ostensibly to finalize a written agreement.

20 238 At this meeting in June 1997, LEE informed SUBRAMANIAN that she wished to
21 arrange for an audit of QAD-JAPAN by ANDERSEN.

22 239 Initially LEE was combative and tried to imply that when such an audit would be
23 done, SUBRAMANIAN would be found to have not managed OLD-QAD-JAPAN
24 properly, and that she "already" could see how there were many "control" problems at
25 OLD-QAD-JAPAN, including what she termed as the "conflict of interest" of
26 SUBRAMANIAN in his positions at VEDATECH-JAPAN, and that there needs to be an
27
28

1 investigation of the finances OLD-QAD-JAPAN to confirm her "suspicions".
2 SUBRAMANIAN mentioned several problems that he had been asking QAD-USA to fix
3 for several years, such as, for example, a lack of a formal agreement between parent and
4 subsidiary but LEE ignored all such feedback.

5
6 With respect to the "conflict of interest" situation

7 240 SUBRAMANIAN told LEE that with respect to the so-called "conflict of interest"
8 situation, (i.e. the fact that SUBRAMANIAN was Representative Director for both
9 VEDATECH-JAPAN and OLD-QAD-JAPAN), the situation itself was created by the
10 request of and concurrence of QAD-USA and that this was not something that
11 SUBRAMANIAN could be criticized for.

12
13 The instant "severance agreement"

14 241 Instead, SUBRAMANIAN was presented by LEE with a hastily prepared draft
15 severance agreement. SUBRAMANIAN was unsuccessfully pressed by DOORDAN and
16 LEE into signing this right then and there. This draft severance agreement was sent to
17 LEE by Mr. Roland Desilets of QAD-USA during this visit of LEE to Japan and shortly
18 before she presented it to SUBRAMANIAN. LEE tried to induce SUBRAMANIAN to
19 sign this agreement by saying that he can get a large severance payment if he signed it.

20 242 DOORDAN told SUBRAMANIAN shortly after LEE presented this document
21 that SUBRAMANIAN should not pay any attention to the section where there was a
22 blank space for filling in an amount of money as "severance", as he would make sure that,
23 such amount was "zilch", and that SUBRAMANIAN did not deserve any such severance,
24 even if SUBRAMANIAN were to accept the unilateral proposal.

25
26 243 With so much confusion between the various amateurish attempts by DOORDAN
27 and LEE to trick SUBRAMANIAN into simply resigning, not much progress was made.
28

1 Alternatives offered by SUBRAMANIAN to the "audit" by ANDERSEN

2 244 SUBRAMANIAN rejected this extemporaneous attempts by DOORDAN and LEE
3 in bringing up the issue of a "severance agreement" and referred them to KLOPKER and
4 the directions given by KLOPKER at the previous meeting in California. The topic then
5 shifted to the issue of the audit.
6

7 245 In the beginning, LEE told SUBRAMANIAN that the investigation by
8 ANDERSEN will go on because she was going to order it, and because she felt that any
9 opinion by ANDERSEN, even though they would be technically reporting to her and not
10 be strictly independent, would still be considered authoritative, and expressed her
11 conclusion that SUBRAMANIAN will have no choice but to resign shortly afterward
12 such an investigation.

13 246 Being fully aware of the various efforts by Doordan and LEE to cast doubt upon
14 the reputation of Plaintiffs, SUBRAMANIAN at this point in time offered to clear up his
15 name and participate in a full and thorough check of the accounts of QAD-JAPAN and,
16 (to the extent feasible and possible) that of VEDATECH-JAPAN, all to be conducted by
17 the finance department of QAD-USA.
18

19 247 SUBRAMANIAN explained clearly to LEE that such an exhaustive audit of OLD-
20 QAD-JAPAN was quite feasible as the operations of OLD-QAD-JAPAN were small and
21 the amount of transactions relatively few and thus OLD-QAD-JAPAN was amenable to
22 such a thorough and exhaustive check.

23 248 SUBRAMANIAN specifically suggested that Mr Dale Akita of QAD-USA, a
24 senior finance department executive in QAD-USA and well respected inside QAD-USA
25 might lead such an effort.
26

27 249 LEE was not willing to listen to any of these alternatives.
28

1 Exhaustive Check better than "audit"

2
3 250 SUBRAMANIAN reminded LEE again that if the reasons for LEE wanting an
4 audit were as stated then SUBRAMANIAN would offer LEE the proposal described
5 above which was even better than an audit: since the number of transactions at OLD-
6 QAD-JAPAN was not very high, it would be more efficient for LEE or someone in the
7 Finance department at QAD-USA to simply look through the books of OLD-QAD-
8 JAPAN exhaustively, and thus exonerate SUBRAMANIAN completely.

9 251 SUBRAMANIAN further told LEE that he considered it improbable that the IPO
10 preparations would be better served with an audit that checked (or sampled) only a few
11 things than by such a thorough review which had the benefit of putting all issues to rest
12 once and for all.

13 252 SUBRAMANIAN explained to LEE that an outside audit was not satisfactory as,
14 based only on "sample" data, such an audit made various conclusions, all based on
15 assumptions relating to the auditing company's experience and other historical "averages"
16 and "trends" based on prior audits.

17
18 253 LEE rejected such a proposal. LEE was adamant that only a big name, and that too
19 ANDERSEN staff from their Los Angeles branch would be acceptable for the IPO.

20 KPMG-Japan as an alternate disinterested party to conduct the audit

21
22 254 Furthermore, SUBRAMANIAN tried to persuade LEE that the best outside agency
23 to undertake such an effort, if such an effort had to be taken would be KPMG Japan as
24 they had handled a prior audit of QAD-JAPAN, were local Japanese auditors familiar
25 with Japanese accounting and business practices and would be able to do a better job for
26 QAD-JAPAN than ANDERSEN staff from the Los Angeles office.

1 255 Lee rejected this too as it did not fit her plan of showing up WHATLEY or of
 2 showing how she had brilliantly detected problems in all these subsidiaries. It was also
 3 not consistent with the conspiracy hatched with DOORDAN.

4
 5 **LEE's attempt to persuade Plaintiffs on different grounds**

6 256 Nevertheless, upon hearing these many alternatives that SUBRAMANIAN was
 7 willing to accept, LEE changed her tactic (as she had to) and tried then to persuade
 8 SUBRAMANIAN that it was in Plaintiffs' best interest to cooperate with the audit, and
 9 that it was necessary and that it would be professionally done etc.

10 257 As detailed below, upon further questioning by SUBRAMANIAN, LEE took the
 11 position that an evaluation by ANDERSEN of Los Angeles was an essential condition for
 12 QAD-USA to clear due diligence for the IPO and that it is important that
 13 SUBRAMANIAN should cooperate.

14
 15 258 SUBRAMANIAN, of course wanted to help make the IPO a success.

16
 17 **Fraud Committed by LEE, ANDERSEN, DOORDAN and others**

18 259 LEE made several fraudulent statements in this vein and, along with ANDERSEN
 19 and her supervisor RANEY, and thus QAD-USA, convinced SUBRAMANIAN to
 20 participate in this charade dressed up as an "audit".

21 260 As a result of this, Plaintiffs forewent other options of clearing their name and the
 22 confusion and ill-will engendered by the process of going through these preordained
 23 exercises and the resulting false information, innuendoes and other fallout damaged the
 24 relationship that Plaintiffs had with QAD-USA irretrievably, leading to a breakdown in
 25 the relationships, causing, in addition, consequential and incidental damages to Plaintiffs.
 26 The time lines relating to these activities are set out below.
 27

28 **The arrangements for the audit by ANDERSEN**

1 261 In or about July 1997, DOORDAN and LEE requested ANDERSEN to conduct
 2 this internal investigation of OLD-QAD-JAPAN ostensibly using techniques similar to
 3 what they use in their normal auditing duties.

4 262 Unknown to Plaintiffs, the results were preordained and LEE and DOORDAN
 5 would make sure that it was severely critical of Plaintiffs. Thus, DOORDAN, LEE and
 6 ANDERSEN planned from the beginning that the results of this investigation would be
 7 used to persuade KLOPKER to breach QAD-USA's relations with Plaintiffs.
 8

9 **Assurances by Mr. Dennis Raney, the new CFO of QAD-USA**

10 263 Worried by LEE's inconsistent statements during her trip to Japan in June 1997,
 11 SUBRAMANIAN sought and obtained assurances from Mr. Raney that such an
 12 investigation would be conducted fairly and SUBRAMANIAN could rest assured that it
 13 will be a professional job done by ANDERSEN. Mr. Raney did assure SUBRAMANIAN
 14 that the investigation would be conducted fairly and there would be no attempt to unfairly
 15 target SUBRAMANIAN or VEDATECH-JAPAN.
 16

17 264 As a result of this Mr. Dennis Raney, who was the immediate supervisor of LEE at
 18 that time, asked SUBRAMANIAN to give permission to ANDERSEN and to QAD-USA
 19 for conducting an investigation of OLD-QAD-JAPAN by ANDERSEN.
 20

21 265 Mr. Raney informed SUBRAMANIAN that ANDERSEN had a dual role in this
 22 matter and was acting both in their capacity as an independent professional firm used to
 23 such audit-like investigations and also acting in their capacity of having been hired as an
 24 internal consulting group to help QAD-USA conduct its own internal investigations and
 25 make recommendations to QAD-USA in light of its upcoming IPO.

26 266 RANEY further assured SUBRAMANIAN that he was speaking both on behalf of
 27 QAD-USA and, as he had personally confirmed the matter with ANDERSEN, could also
 28 speak for ANDERSEN on this matter. Furthermore, the staff from ANDERSEN were

1 technically under this control as he (through LEE) directed their job assignments in at
2 least an overall sense.

3 267 Although SUBRAMANIAN had some doubts, he was persuaded by these
4 multiple endorsements and assurances (including direct assurances and promises by
5 ANDERSEN itself), and on that basis, permitted such an investigation to proceed with the
6 full expectation that a firm such as ANDERSEN would never dare falsify the results of
7 such an investigation.

8 9 The dual role of ANDERSEN

10 268 ANDERSEN, in at least one written communication in or around September 1997
11 also took the position that it was acting as QAD-USA in its conduct of the investigation
12 of OLD-QAD-JAPAN (suggesting that perhaps it was not acting as a professional
13 independent audit firm under the Arthur Andersen name), although the initial report
14 presented to SUBRAMANIAN and QAD-USA was clearly on the letterhead of
15 ANDERSEN and was presented as a report from ANDERSEN.

16
17 269 This was obviously a naked attempt by ANDERSEN (after the event) to distance
18 itself from the mess it created after it became apparent that SUBRAMANIAN was going
19 to pursue the matter beyond simple protestations.

20 Representations by ANDERSEN made directly to Plaintiffs

21
22 270 The manager at ANDERSEN working out of the Los Angeles office ("AA-
23 MANAGER") responsible for this investigation, directly himself, and through Mr. Chiba
24 ("CHIBA"), who is a partner at ANDERSEN but working in the Tokyo office, also
25 assured SUBRAMANIAN that his staff will travel to Japan and conduct a professional
26 investigation whose results would not be biased in any way and that SUBRAMANIAN
27 had nothing to fear from such an investigation.

1 271 The AA-MANAGER specifically assured SUBRAMANIAN, directly by himself,
 2 and through CHIBA that personnel at QAD-USA such as LEE or RANEY would not be
 3 able to affect their professional judgment, and that they were an independent auditing
 4 firm that would be undertaking to do this audit for OLD-QAD-JAPAN.

5 272 Furthermore, SUBRAMANIAN was assured by CHIBA that ANDERSEN would
 6 conduct such an investigation professionally, and that his own department, that was
 7 providing accounting services to OLD-QAD-JAPAN would also behave very
 8 professionally and observe the "Chinese wall" between the accounting and audit-related
 9 functions.
 10

11 273 Furthermore, Ms. Akiko Sasaki ("AKIKO"), the actual individual assigned to
 12 perform this investigation, met with SUBRAMANIAN before the start of such
 13 investigation in the offices of OLD-QAD-JAPAN in July 1997. At this meeting, AKIKO
 14 initially expressed her own surprise at the unusual nature of some of the tasks assigned to
 15 her regarding the investigation she was going to perform (including, in her words, the
 16 request by QAD-USA to try to conduct an investigation of VEDATECH-JAPAN also),
 17 but nevertheless promised SUBRAMANIAN that ANDERSEN will conduct a fair and
 18 even investigation, that the techniques she will be using are standard auditing procedures
 19 used by ANDERSEN worldwide, and that this report would be a true and accurate report
 20 of her findings.

21
 22 **The position of the parties with respect to this "audit"**

23 274 OLD-QAD-JAPAN is a Japanese corporation incorporated in Yokohama, Japan
 24 under the Commercial Code of Japan. QAD-USA is a majority shareholder of OLD-
 25 QAD-JAPAN and as such does not have the ability to direct the day-to-day operations of
 26 OLD-QAD-JAPAN, nor can QAD-USA initiate or permit any investigation into the
 27 affairs of OLD-QAD-JAPAN without the permission and concurrence of its
 28 Representative Director, which at that time was SUBRAMANIAN.

1 275 VEDATECH-JAPAN had a contract with QAD-USA to manage OLD-QAD-
 2 JAPAN and SUBRAMANIAN's role was authorised both under the Commercial Code of
 3 Japan and under the contractual arrangement of VEDATECH-JAPAN with QAD-USA.

4 276 Fully realizing this, both QAD-USA and ANDERSEN formally sought permission
 5 from Plaintiffs and received such permission on the basis of their false assurances and
 6 fraudulent representations.

7
 8 277 It is by making fraudulent representations directly to Plaintiffs that ANDERSEN
 9 was able to enter the premises of OLD-QAD-JAPAN and conduct its so-called
 10 "investigation", in which Plaintiffs participated voluntarily although as a result of the
 11 deceit practiced by ANDERSEN, LEE, QAD-USA, DOORDAN and others on Plaintiffs.

12 Plaintiffs are clearly third-party beneficiaries of ANDERSEN's "audit"
 13

14 278 Thus, not only did ANDERSEN form a direct auditor-client relationship with
 15 OLD-QAD-JAPAN, Plaintiffs were also the clear and direct third-party beneficiaries of
 16 such engagement. This is clear from the fact that ANDERSEN clearly knew the purpose
 17 of the audit, conspired with LEE and DOORDAN to falsify the audit in order to hurt
 18 Plaintiffs and needed permission from Plaintiffs to conduct the audit in the first place.

19 Actions undertaken by SUBRAMANIAN in reliance on such representations
 20 and the various options that Plaintiffs forewent in agreeing to this "audit"
 21

22 279 Thus, based on specific assurances of QAD-USA (through its then Chief Financial
 23 Officer, Mr. Dennis Raney), and LEE and ANDERSEN (in conspiracy with the ever
 24 active DOORDAN), SUBRAMANIAN voluntarily permitted such an exercise to be
 25 conducted at the offices of OLD-QAD-JAPAN in spite of his misgivings about the
 26 potential for injuries to himself and VEDATECH-JAPAN from a falsified or inaccurate
 27 report generated from such exercise, even though he was under no obligation under the
 28 circumstances to agree to the same.

1 280 Furthermore, based on the specific assurances of CHIBA of ANDERSEN,
2 Plaintiffs decided to permit ANDERSEN to continue in its conflicting roles of accounting
3 services provider and investigator (in an audit-like role), and continued the engagement of
4 ANDERSEN to provide internal accounting services to OLD-QAD-JAPAN.

5 281 In addition, SUBRAMANIAN forewent his other options of asking someone such
6 as Mr. Dale AKITA from QAD-USA to conduct an exhaustive check of OLD-QAD-
7 JAPAN's accounting records, or insist on someone neutral such as KPMG-JAPAN who
8 had undertaken work for OLD-QAD-JAPAN under specific agreement and appointment
9 by QAD-USA before.

10
11 282 Furthermore, SUBRAMANIAN delayed his decision to travel to California to
12 meet with KLOPKER to resolve the potential problem created by DOORDAN and QAD-
13 USA not fulfilling QAD-USA's promise to have a comprehensive written agreement (by
14 the end of July 1997) reflecting the various oral agreements between the parties.

15 283 In addition, the ill-will and friction created by this entire exercise and the false
16 reports that followed in and of itself damaged the relationship between Plaintiffs and
17 QAD-USA to the point of a complete breakdown in the relations between the parties.
18

19 The breach of the Chinese Wall by CHIBA of ANDERSEN

20 284 CHIBA and his staff at ANDERSEN, contrary to their promise to maintain the
21 "Chinese wall" between the function they were providing and the function of AKIKO,
22 without the permission of SUBRAMANIAN or OLD-QAD-JAPAN discussed various
23 accounting related issues during the week of the investigation.
24

25 285 CHIBA and his staff also helped create false descriptions of the status of the
26 accounts at OLD-QAD-JAPAN to aid ANDERSEN's Los Angeles office to falsify its
27 report regarding the books of OLD-QAD-JAPAN.
28

1 ANDERSEN's attempts to expand their "investigation" to VEDATECH

2 286 Although during the first several days at OLD-QAD-JAPAN, AKIKO, the auditor
3 from ANDERSEN complained about not having access to VEDATECH-JAPAN's
4 internal accounting data (which she clubbed under the term "non-cooperation"), on the
5 Friday of the week of the investigation (at the end of the investigation,) AKIKO informed
6 SUBRAMANIAN that she had found no problems on the basis of her investigation and
7 she wanted SUBRAMANIAN not to worry about the results of her work.
8

9 287 IN addition, AKIKO specifically told SUBRAMANIAN that there were no
10 problems at all that she found in her week long investigation, barring minor ones relating
11 to documents she was still expecting to get, and further said that she was relieved
12 especially that the cash reconciliation turned out to be without problems -- she told
13 SUBRAMANIAN not to worry about the ANDERSEN report before she left (early on
14 Friday afternoon).
15

16 The easy and leisurely schedule of AKIKO of ANDERSEN

17 288 It is significant to note that SUBRAMANIAN at that time offered to have AKIKO
18 stay for another week or more if necessary for her to complete any questions she might
19 have, but it was turned down by AKIKO. While during the week, in general she did not
20 stay past 5 pm and turned up late in the morning several times (past 10 a.m. and once at or
21 around 11:00 a.m. explaining that her work was going very well, and that there was no
22 need for a lot of overtime), on Friday, the last day of the investigation, AKIKO left early
23 (soon after lunch) to be with her relatives in Japan, (she had indicated that she was
24 visiting her mother) as she said that she had completed her job adequately.
25

26 Reliance on the assurances of AKIKO of ANDERSEN

27 289 In reliance on these further assurances by ANDERSEN, SUBRAMANIAN further
28 delayed his trip to California to meet with KLOPKER and decided to stay and solve the

1 problems caused by the situation going into August 1997 with the unclear status of the
 2 relationship created by the April 1997 letter of DOORDAN and the broken promise of
 3 QAD-USA to have a comprehensive replacement agreement by the end of July 1997.

4
 5 **ANDERSEN forges signatures to help DOORDAN and LEE**

6 290 In or around August 1997, ANDERSEN, acting in concert with DOORDAN
 7 opened a bank account in Japan under the name of OLD-QAD-JAPAN, improperly using
 8 the name of SUBRAMANIAN. Such an account was set up with the express purpose of
 9 improperly funneling funds from QAD-USA to Japan to be used under the direction of
 10 ANDERSEN and DOORDAN.

11 291 This helped DOORDAN achieve his goal of starving OLD-QAD-JAPAN of funds,
 12 justified, of course by spreading rumors inside QAD-USA about ostensible worries about
 13 permitting Plaintiffs to manage funds for OLD-QAD-JAPAN, with such insinuations to
 14 be bolstered by the false report of ANDERSEN.

15
 16 292 In fact, by cooperating with DOORDAN in falsifying signatures and starving
 17 Plaintiffs of funds to operate with ANDERSEN was also causing damage to Plaintiffs.

18
 19 **DOORDAN's conspiracy with TAKATORI and the NRI group of companies**

20 293 Upon information and belief, in or around July 1997, NRI-HKG, NRI-JAPAN,
 21 TAKATORI and other parties facilitated the involvement of an affiliate, Nomura
 22 Securities, to invest a substantial sum in the securities of QAD-USA offered as part of the
 23 IPO process.

24 294 In or around July 1997, KLOPKER traveled to Japan to make presentations
 25 regarding the IPO ("the road show"). During one such presentation KLOPKER met with
 26 OBATA of EGON-JAPAN where he reiterated his (KLOPKER's) commitment to having
 27 SUBRAMANIAN stay on until a smooth transition could be agreed between KLOPKER
 28

1 and SUBRAMANIAN. OBATA later on told SUBRAMANIAN about this meeting and
2 related the above conversation.

3 The motivation for DOORDAN
4

5 295 Several executives from QAD-USA told SUBRAMANIAN that KLOPKER was
6 concerned that VEDATECH-JAPAN had a lot of experience built up with QAD's
7 business, especially in the matter of the MFG/PRO software and that KLOPKER was
8 further concerned that DOORDAN's efforts might destroy this built up goodwill and
9 experience in the marketplace.

10 296 Thus, DOORDAN needed a story for how QAD-USA can have a good partners in
11 Japan before he could ever hope to gain KLOPKER's approval for breaching QAD-USA's
12 commitments to Plaintiffs, if he would even agree to such a thing for other reasons.
13

14 297 In TAKATORI and the NRI group, DOORDAN saw just such a solution. NRI
15 was a large group of service providers that could, under the right conditions be a good
16 partners for OLD-QAD-JAPAN and QAD-USA in Japan. SUBRAMANIAN himself had
17 wanted to build a good partnership with the NRI group. But DOORDAN did not want
18 both Plaintiffs and the NRI group to survive -- he simply wanted to use the NRI group as
19 a reason to reassure KLOPKER that the loss of a relationship with Plaintiffs would not
20 hurt KLOPKER's plans for succeeding in the Japanese market..

21 The motivation for TAKATORI
22

23 298 TAKATORI was a low-level manager at NRI-JAPAN sent to Hong Kong to start
24 up and lead the IT business for NRI through its controlled subsidiary and alter ego NRI-
25 HKG. TAKATORI realized the enormous potential of MFG/PRO for getting adjunct
26 service business and saw a chance to improve his personal standing within the company
27 by creating a quick success story out of the MFG/PRO business in Hong Kong and Japan.
28

1 299 TAKATORI was able to establish a relationship with the managers left in place in
2 Hong Kong by DOORDAN and was successful in starting up an MFG/PRO based
3 business for NRI-HKG.

4 300 Although TAKATORI was officially only responsible for the activities of NRI-
5 HKG, he was still an employee of NRI-JAPAN (as most Japanese managers on
6 deputation to foreign subsidiaries are), and wished to increase his chances of getting a
7 better position within the group. In attempting to do this TAKATORI took it upon
8 himself to gain the MFG/PRO business for NRI-JAPAN also.
9

10 301 Like DOORDAN, TAKATORI saw SUBRAMANIAN and VEDATECH-JAPAN
11 (and the relationship that Plaintiffs had with QAD-USA) as a road block to achieving his
12 personal goals, which in the case of TAKATORI being able to grab easily a major share
13 of the Japanese market for the MFG/PRO service (implementation) business. In this way,
14 he could raise his stature not only within the NRI group, but also bolster his resume for
15 joining any other multinational in Japan.

16 302 It is thus that the conspiracy between DOORDAN and TAKATORI (and NRI-
17 HKG and NRI-JAPAN) was born and sustained.
18

19 The libelous letters from TAKATORI to QAD-USA

20 303 In or around July 1997, defendant TAKATORI, acting in concert with
21 DOORDAN and/or their agents, sent one or more letters and/or emails to QAD-USA
22 denigrating the business reputation and capability of Plaintiffs and attempting to induce
23 QAD-USA to terminate its relationship with Plaintiffs.
24

25 304 This was done on behalf of, and for the benefit of NRI-HKG, NRI-JAPAN, and
26 TAKATORI personally, all of whom would gain existing and potential customers of
27 VEDATECH-JAPAN and other benefits including the consequential entry into the
28 lucrative after-sales service business (implementation) of the products of QAD-USA.

1 Conspiracy between DOORDAN, NRI-HKG, NRI-JAPAN and TAKATORI

2 305 Upon information and belief, in the ways as described above, and in additional
3 ways, DOORDAN, TAKATORI, NRI-HKG and NRI-JAPAN, acted in concert and
4 induced KLOPKER to terminate the relationship between VEDATECH-JAPAN and
5 QAD-USA. Further, these actions were undertaken to benefit NRI-JAPAN, NRI-HKG,
6 and TAKATORI in obtaining business that was being developed by VEDATECH-
7 JAPAN for their own benefit.

8
9 306 In addition, the same group of DOORDAN, TAKATORI, NRI-HKG, and NRI-
10 JAPAN continued to induce other customers of VEDATECH-JAPAN to terminate their
11 relationships with VEDATECH-JAPAN and influenced many others not to even start a
12 relationship with VEDATECH-JAPAN.

13 307 These and other actions were also undertaken by TAKATORI and DOORDAN for
14 the promotion of their own personal interests, over and above their duties as an executive
15 of the NRI group or QAD-USA respectively. NRI-JAPAN both through TAKATORI
16 and through its own employees and agents further took actions damaging to Plaintiffs.
17

18 Conspiracy to starve funds from OLD-QAD-JAPAN

19 308 In or around July 1997, DOORDAN, LEE and others conspired to force the
20 resignation of SUBRAMANIAN from OLD-QAD-JAPAN by starving OLD-QAD-
21 JAPAN and VEDATECH-JAPAN of funds from QAD-USA.
22

23 309 Whereas DOORDAN and QAD-USA (by later ratification of the actions of
24 DOORDAN) continued to promise SUBRAMANIAN that more funds would be
25 transmitted for the operation of QAD-JAPAN and for the payments to VEDATECH-
26 JAPAN, all the while knowing fully well that no such funds would be sent, QAD-USA
27 continued to benefit from the services of VEDATECH-JAPAN and made continuing
28

1 requests for work from SUBRAMANIAN and VEDATECH-JAPAN, and Plaintiffs, in
 2 reliance on such promises by DOORDAN continued to provide such services.

3 310 With the exception of a small payment to VEDATECH-JAPAN in or around
 4 August of 1997, QAD-USA made no further payments to VEDATECH-JAPAN.
 5

6 311 From August 1997 QAD-USA also made no further remittances to OLD-QAD-
 7 JAPAN, in spite of having falsely assured SUBRAMANIAN that such payments would
 8 be made.

9
 10 The falsified "report" of ANDERSEN following its "investigation"

11 312 In or around August 1997, ANDERSEN prepared a draft report of the results of
 12 their "audit" of OLD-QAD-JAPAN. This report engineered by ANDERSEN improperly
 13 accused Plaintiffs of diverting and improperly benefitting from funds of OLD-QAD-
 14 JAPAN, and further accused Plaintiffs of refusing to cooperate with or withholding
 15 information from the investigator (AKIKO) assigned by ANDERSEN.

16 313 Without regard to objections by SUBRAMANIAN and documented proof offered
 17 by SUBRAMANIAN refuting the allegations of ANDERSEN in its draft report submitted
 18 to SUBRAMANIAN for feedback, ANDERSEN, in concert with LEE and DOORDAN,
 19 finalized and published a revised version of this draft report in September 1997 along
 20 with publication of its responses to SUBRAMANIAN's feedback, which responses
 21 contained further falsities regarding the subject matter of such report. Upon information
 22 and belief, such publications were at the express direction and exhortation of LEE and
 23 DOORDAN, and were also independently the result of the conspiracy between
 24 DOORDAN, LEE and ANDERSEN.
 25

26 314 By the time SUBRAMANIAN realized the seriousness of the false report having
 27 already been presented to KLOPKER and others in QAD-USA, DOORDAN and LEE
 28

1 had used such false report to turn several influential executives at QAD-USA against
2 SUBRAMANIAN.

3
4 315 Several QAD-USA employees in various conversations with SUBRAMANIAN
5 expressed surprise at the nature of the allegations and expressed doubt about the viability
6 of SUBRAMANIAN or VEDATECH-JAPAN being able to continue in their positions.

7 DOORDAN's attempts to hire away VEDATECH-JAPAN's employees

8
9 316 DOORDAN, directly or through his agents, continued in his attempts to hire away
10 employees of VEDATECH-JAPAN.

11 DOORDAN's further attempts to disrupt the business of OLD-QAD-JAPAN

12
13 317 In or around February 1997 DOORDAN was continuing to try to disrupt the
14 support for SUBRAMANIAN both in QAD-USA and in Japan. One of the techniques
15 adopted by DOORDAN was to try to build friendships with the staff of OLD-QAD-
16 JAPAN, and inform them falsely that QAD-USA was trying to replace SUBRAMANIAN
17 and that he needed help from them in doing so. This he did, even while KLOPKER was
18 replacing him with SPRUIT as the person to coordinate with OLD-QAD-JAPAN on
19 behalf of QAD-USA.

20 318 The employees that DOORDAN was so trying to improperly influence included
21 Takahashi, Sato, Kanehara and Nagae. Kanehara was being courted by Mr. William
22 Bezy, a young manager installed in a high position in Hong Kong soon after or just before
23 DOORDAN went back to California from Hong Kong in late 1995 or early 1996.

24 319 Bezy was Doordan's hatchet man and took care of DOORDAN's interests even
25 though DOORDAN was no longer managing the Hong Kong office.

26
27 320 In early 1996, Kanehara resigned from OLD-QAD-JAPAN and was mysteriously
28 hired by QAD's Asia-Pacific office under Bezy. From this position, Kanehara started.

1 contacting customers of OLD-QAD-JAPAN and the employees of VEDATECH-JAPAN
2 and in various ways started creating disruptions in the relationship between Plaintiffs and
3 VEDATECH-JAPAN's customers and OLD-QAD-JAPAN's customers on one hand and
4 between Plaintiffs and its employees on the other hand.

5 321 Takahashi and Nagae for their part started scouting for a new president of OLD-
6 QAD-JAPAN, falsely believing that DOORDAN had the sanction of the QAD-USA top
7 management at this point in time.

8
9 322 DOORDAN encouraged other employees such as Sato to voice their complaints
10 about SUBRAMANIAN or the management of OLD-QAD-JAPAN to senior executives
11 in QAD-USA so that SUBRAMANIAN could be made to look bad.

12 The hatchet team from Carpinteria

13
14 323 DOORDAN also, through Kanehara et. al. started writing to customers telling
15 them to send their customer support questions directly to Hong Kong and offering support
16 from the Hong Kong offices of QAD-USA.

17 324 From processing normal customer support calls, DOORDAN, through his agents
18 Bezy and Kanehara started to falsely accuse OLD-QAD-JAPAN of not being able to
19 support their customers properly and with that excuse sought permission from
20 SUBRAMANIAN to send his team of "specialists" to Japan to work out of the OLD-
21 QAD-JAPAN offices, ostensibly to help customers in Japan.

22
23 325 Since additional support of any kind would ultimately benefit customers, even if it
24 was part of an improper design by DOORDAN, SUBRAMANIAN eventually agreed to
25 having such a team come to Japan, not realizing the depths to which DOORDAN would
26 go to try to topple SUBRAMANIAN.

27 326 It is in this context, that John Gould came to Japan in the last week of July 1997.
28

1 The Gould factor - Doordan's hatchet team gets a leader

2 327 John Gould, whose claim to fame inside QAD-USA was his hatchet job for
3 DOORDAN in Brazil where DOORDAN had successfully destroyed the business of
4 QAD-USA's ex-Brazilian distributor by hiring away their employees and taking over the
5 business they had developed for QAD-USA, came to Japan in or around the last week of
6 July 1997, and checked into the Landmark Tower hotel.

7
8 328 Given a desk at the OLD-QAD-JAPAN offices he quickly set out to try to get
9 customers to deal with him directly and not with VEDATECH-JAPAN or
10 SUBRAMANIAN. But lacking in Japanese language skills, he was not wholly
11 successful.

12 329 In or around August 1997, Justin Decker, an employee of QAD-USA, responsible
13 for computer systems maintenance came to Japan and recorded all the computer
14 equipment in the office, after having falsely represented to SUBRAMANIAN that he was
15 there to fix some problems with the networking between Japan and USA.

16
17 330 Justin's wife, Yoko Wada Decker, who was Japanese, and who was neither
18 employed by QAD-USA nor employed by OLD-QAD-JAPAN was permitted to work for
19 John Gould in the office. Upon objections by SUBRAMANIAN, Barry Anderson while
20 on his trip to Japan in September 1997 wrote up a backdated employment offer letter in
21 front of SUBRAMANIAN and said that would take care of the "employment" problem,
22 not realizing that he had no legal right to make a Japanese employee work in the offices
23 of OLD-QAD-JAPAN by executing a back-dated (or otherwise dated) document
24 purportedly signed between that individual and QAD-USA.

25 331 In any event, Gould and his team started building a team for NEW-QAD-JAPAN
26 (see below), by using the offices of OLD-QAD-JAPAN and all the while working to
27 undermine OLD-QAD-JAPAN and Plaintiffs.
28

1 NEW-QAD-JAPAN

2 332 In or around August 1997, DOORDAN, with the help of others, and with the
3 concurrence of QAD-USA, established NEW-QAD-JAPAN as a Delaware corporation.
4

5 333 NEW-QAD-JAPAN was intentionally named as QAD Japan Inc. to sound similar
6 to OLD-QAD-JAPAN, which in English was called Qad Japan K.K. Letterheads were
7 made that looked similar to the ones used by OLD-QAD-JAPAN.

8 Change in the Bank Account Number?

9
10 334 Beginning in or around October 1997, DOORDAN and QAD-USA (especially
11 through Bezy and Kanehara, and then through Takeshi Nagae, a salesman based out of
12 the Osaka region), contacted existing and prospective customers of VEDATECH-
13 JAPAN, fraudulently presented NEW-QAD-JAPAN as OLD-QAD-JAPAN for the
14 purpose of, among other things, diverting funds and business of such customers away
15 from OLD-QAD-JAPAN and VEDATECH-JAPAN.

16 335 DOORDAN and others started sending letters to customers of OLD-QAD-JAPAN
17 under the letter head called Qad Japan (which could technically stand for both OLD-
18 QAD-JAPAN or NEW-QAD-JAPAN), "informing" them, among other things that the
19 bank account had changed (i.e sending them the bank account information for NEW-
20 QAD-JAPAN under the pretext that the bank account for OLD-QAD-JAPAN had
21 changed).
22

23 336 DOORDAN et. al. were committing fraud on the customers in order to achieve
24 their goal of forcing SUBRAMANIAN to resign for lack of funds to operate the business
25 of OLD-QAD-JAPAN or VEDATECH-JAPAN.

26 337 DOORDAN and others such as Roger Boyle also called customers such as Daikyo-
27 Webasto to stop payments that were due to OLD-QAD-JAPAN.
28

Office Space at the Landmark Tower

338 Because of DOORDAN's tactics leading to a lack of funds to operate OLD-QAD-JAPAN, the rent on the premises being used by OLD-QAD-JAPAN at the Landmark Tower (a prestigious building in Yokohama, and the tallest building in Japan) was severely overdue. SUBRAMANIAN was under severe pressure from the landlord to guarantee future payments and provide an explanation for what was going on.

339 Unable to be able to provide any such guarantees and unable to convince KLOPKER to take action against DOORDAN, SUBRAMANIAN cancelled the lease on the premises in or around early October 1997. DOORDAN by this time tried to arrange for a partial payment directly to the landlord but it was too late and the lease was duly cancelled.

340 QAD-USA, through DOORDAN started legal action in the Yokohama District Court in October 1997 asking the Court to provide a restraining Order against SUBRAMANIAN, and an order against the Landlord (Mitsubishi Real Estate of Yokohama) among other requests for relief, but dropped the case after sharp questioning by the Court at the first hearing. Specifically the Court questioned QAD-USA about the activities surrounding NEW-QAD-JAPAN which understandably QAD-USA did not want to get into or answer in any great detail.

Temporary Office Space in Tokyo

341 In order to continue to operate OLD-QAD-JAPAN, SUBRAMANIAN rented space in a business center in the Shinjuku district of Tokyo. Soon, DOORDAN approached the manager of that office, Ms. Amy Ohnuma ("AMY"), and made libelous statements about SUBRAMANIAN, in addition to indicating to AMY that he had an unlimited budget and wanted to operate out of the same offices.

1 342 Thus, NEW-QAD-JAPAN was established in offices literally in the same space as
2 OLD-QAD-JAPAN and started using information from the incoming phone calls for
3 OLD-QAD-JAPAN and faxes for OLD-QAD-JAPAN to respond to customers and send
4 them letters asking them not to deal with OLD-QAD-JAPAN but to deal with NEW-
5 QAD-JAPAN.

6 343 NEW-QAD-JAPAN even used the same fax letterheads prepared for OLD-QAD-
7 JAPAN by the business center to communicate with customers, all the while leading them
8 to believe that they were dealing with OLD-QAD-JAPAN.
9

10 344 AMY, whose personal or professional motivation for cooperating with
11 DOORDAN is not known to Plaintiffs, quit her job at the business center and started
12 working for NEW-QAD-JAPAN under DOORDAN.

13 345 In this way, DOORDAN used NEW-QAD-JAPAN to destroy the business of
14 OLD-QAD-JAPAN and SUBRAMANIAN and VEDATECH-JAPAN.
15

16 Interference with the business of VEDATECH-JAPAN

17 346 Beginning in or around October 1997, DOORDAN, NEW-QAD-JAPAN, NRI-
18 JAPAN and others continued to induce existing and potential customers of VEDATECH-
19 JAPAN to shift their business to NRI-JAPAN and others friendly to DOORDAN.
20

21 347 DOORDAN accomplished this by using the resources of OLD-QAD-JAPAN that
22 he had hired into NEW-QAD-JAPAN and those of Hong Kong.

23 Conversion of SUBRAMANIAN's share in OLD-QAD-JAPAN

24 348 In December 1997, QAD-USA conducted an improperly held shareholders'
25 meeting, after which they filed papers with the legal affairs bureau in Yokohama, falsely
26 naming themselves as owners of all 2000 shares of OLD-QAD-JAPAN and improperly
27 terminating SUBRAMANIAN from OLD-QAD-JAPAN.
28

1 Partial Summary of Actions damaging to Plaintiffs

2 349 Further to this improper termination, DOORDAN, NEW-QAD-JAPAN, QAD-
3 USA and one or more of DOES 1-50 contacted existing and potential customers,
4 employees, and other business contacts of Plaintiffs with the purpose of denigrating the
5 business reputation and abilities of Plaintiffs.
6

7 350 Upon information and belief, DOORDAN, NEW-QAD-JAPAN, NRI-JAPAN,
8 TAKATORI and NRI-HKG, and one or more DOES 1-50 directly and indirectly,
9 interfered with the existing and potential relationships between customers of
10 VEDATECH-JAPAN, with the intention of diverting them away from VEDATECH-
11 JAPAN.

12 351 Upon information and belief, the actions undertaken by QAD-USA, NEW-QAD-
13 JAPAN, ANDERSEN, DOORDAN, NRI-JAPAN, NRI-HKG, DOORDAN, LEE,
14 TAKATORI and DOES 1 through 50, wrongfully damaged SUBRAMANIAN and
15 VEDATECH-JAPAN's business reputation, their relationships with existing and potential
16 customers, and fraudulently converted share ownership of Plaintiff SUBRAMANIAN in
17 OLD-QAD-JAPAN.
18

19 352 From January 1997 through at least October 1997, QAD-USA (liable for the
20 actions of and in ratifying the actions undertaken through SPRUIT, Mr. Roland Desilets,
21 KLOPKER and others) and DOORDAN (both or separately in his official and personal
22 capacities), falsely and fraudulently and with intent to deceive and defraud Plaintiffs,
23 represented to Plaintiffs that a written version of a long-term agreement memorializing
24 the terms and conditions of the oral agreement between QAD-USA and VEDATECH-
25 JAPAN would be finalized, in reliance upon which Plaintiffs continued to provide
26 services to QAD-USA and forewent other opportunities and preparations to their own
27 detriment.
28

1 353 From about June 1997 through at least part of October 1997, defendant
 2 DOORDAN falsely and fraudulently and with intent to deceive and defraud Plaintiffs,
 3 represented to Plaintiffs that DOORDAN would provide a written proposal regarding the
 4 option of QAD-USA paying a lump-sum amount to VEDATECH-JAPAN in lieu of the
 5 promised written agreement. Plaintiffs, in reliance upon this forewent other opportunities
 6 and forewent other options of taking corrective action and preparations to their own
 7 detriment.

8 354 In or around July 1997, QAD-USA and ANDERSEN, falsely and fraudulently, and
 9 either with intent to deceive and defraud, or negligently represented to SUBRAMANIAN
 10 and VEDATECH-JAPAN that the proposed investigation by ANDERSEN would be
 11 conducted professionally and that the results of such an exercise would be truthful and
 12 accurate, in reliance on which SUBRAMANIAN
 13

14 354.01 permitted such investigation to proceed; AND

15 354.02 forewent alternate options to clear his name such as asking for an
 16 exhaustive check by an impartial but respected executive of QAD-USA such as
 17 AKITA; AND
 18

19 354.03 forewent an audit by an impartial firm such as KPMG-Japan; AND

20 354.04 forewent taking actions with KLOPKER and QAD-USA in a timely
 21 manner, all to the detriment of SUBRAMANIAN and VEDATECH-JAPAN.
 22

23 355 In or around August of 1997 (in a draft form) and again in or around September
 24 1997 (as a final conclusion) defendant ANDERSEN, falsely and fraudulently, and either
 25 with intent to deceive and defraud, or negligently represented to QAD-USA and others
 26 that Plaintiff SUBRAMANIAN diverted funds for the benefit of Plaintiffs.
 27
 28

1 356 In addition, in September 1997, ANDERSEN represented to Plaintiff
2 SUBRAMANIAN that their purported professional conclusions were based on factual
3 knowledge of DOORDAN's instructions to SUBRAMANIAN and that their false
4 representations were true, when, in fact, ANDERSEN had no reasonable grounds to
5 believe that such representations were true.

6 357 In or around August 1997, ANDERSEN, falsely and fraudulently, and with intent
7 to deceive and defraud, represented to the Tokyo Mitsubishi bank in Iidabashi, Tokyo that
8 they were authorized to set up a bank account on behalf of OLD-QAD-JAPAN and
9 Plaintiff SUBRAMANIAN. ANDERSEN owed a duty towards Plaintiffs to inform them
10 of such a transaction but failed to do so.

11 358 From around August 1997 and continuing through November 1997 and beyond,
12 NEW-QAD-JAPAN, DOORDAN, and QAD-USA, falsely and fraudulently, and with
13 intent to deceive and/or defraud, have misrepresented to existing and potential customers
14 of VEDATECH-JAPAN the nature and purpose of NEW-QAD-JAPAN and OLD-QAD-
15 JAPAN.

16 359 This was done with the intention of diverting funds intended for OLD-QAD-
17 JAPAN, and thus force the resignation of Plaintiff SUBRAMANIAN from his position at
18 OLD-QAD-JAPAN.

19 360 This was also done with the intention of diverting existing and potential customers
20 away from VEDATECH-JAPAN and for the benefit of DOORDAN and entities and
21 individuals that were helpful to DOORDAN in these fraudulent and tortious activities.
22 QAD-USA and others had a special (and fiduciary) duty towards Plaintiffs to inform them
23 of such activities and they failed to do so.
24
25
26
27
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1 361 From about November 1997 onwards QAD-USA, falsely and fraudulently, and
2 with intent to deceive and defraud Plaintiffs, have represented both to Plaintiffs and to
3 others that QAD-USA is the owner of all 2000 shares of OLD-QAD-JAPAN.

4 362 Further, QAD-USA, through its agents KLOPKER and PLOPKER, and defendant
5 DOORDAN falsely and fraudulently represented these facts to the Yokohama Legal
6 Affairs Bureau and fraudulently caused the termination of Plaintiff SUBRAMANIAN's
7 appointment as Representative Director of OLD-QAD-JAPAN.

8
9 363 Because of this fraudulent representation, Plaintiff SUBRAMANIAN has been
10 deprived of the economic and other benefits of the ownership of the share in OLD-QAD-
11 JAPAN.

12 364 Said representations were false and were then and there known by defendants to be
13 false and/or said defendants negligently represented said facts to be true when, in fact,
14 defendants had no reasonable ground to believe that the representations were true.

15
16 365 Plaintiffs believe and relied on the said representations made by defendants
17 DOORDAN and QAD-USA (through its agents/ officers / managers) and/or by
18 ratification of the acts of such agents / officers/ managers), and were thereby induced to
19 continue to invest time and resources in the performance of their obligations under the
20 written and oral agreements, all in reliance on such representations by defendants, and
21 without the benefit of the promised return performance.

22 366 Existing and potential customers of VEDATECH-JAPAN, believed and relied on
23 said representations made by defendants DOORDAN, QAD-USA and NEW-QAD-
24 JAPAN, and were thereby induced to terminate agreements and abandon proposed
25 agreements (including any progress towards the conclusion of such proposed agreements)
26 with the consequent loss of business for VEDATECH-JAPAN.
27
28

1 367 Existing and potential customers of OLD-QAD-JAPAN and VEDATECH-JAPAN
2 relied on the false representations by NEW-QAD-JAPAN, DOORDAN and QAD-USA
3 and were induced to take actions harmful to Plaintiffs including the diversion of business
4 and funds intended for the use and control of the Plaintiffs.

5 368 At the time that said representations were made by defendants QAD-USA and
6 DOORDAN, a fiduciary relationship existed between these defendants and Plaintiff
7 SUBRAMANIAN, including the duty to a minority shareholder and the duty as directors
8 of OLD-QAD-JAPAN. Defendants had a duty to disclose the true facts relating the
9 above representations to Plaintiff SUBRAMANIAN.

10 369 In addition, at the time ANDERSEN made fraudulent and deceitful statements to
11 QAD-USA, a fiduciary relationship existed between ANDERSEN and Plaintiff
12 SUBRAMANIAN, (partly because of the dual role of ANDERSEN where they were also
13 agents of QAD-USA, and partly because of their professional status and their clear
14 knowledge of the relationships between the parties and the clear foreseeability of harm to
15 Plaintiffs), including the duty to disclose the true facts relating to the investigation, and
16 the duty to disclose any attempts to open bank accounts using, without permission, the
17 name and authority of Plaintiff SUBRAMANIAN.

18 370 Plaintiffs did not discover the fraud and deceit practiced on them until the first
19 week of October 1997 when, for the first time, KLOPKER indicated to
20 SUBRAMANIAN the nature and activities undertaken by QAD-USA and DOORDAN
21 regarding these matters.

22 371 Because of the prior fraudulent misrepresentations by QAD-USA and
23 DOORDAN, Plaintiffs relied on such misrepresentations at least until this time. Further
24 details of these fraudulent activities became known to Plaintiffs over a period of several
25 months following this initial disclosure.
26
27
28

372 Upon information and belief, in late 1996 or early 1997, DOORDAN, acting personally and TAKATORI, acting for his personal benefit, and acting on behalf of NRI-HKG and NRI-JAPAN, had discussions regarding the termination of the relationship between Plaintiffs and QAD-USA. In March 1997, DOORDAN and TAKATORI made further attempts to interfere in the relationship between QAD-USA and Plaintiffs, especially at the Bali conference of 1997.

373 In or around the first half of 1997, DOORDAN, TAKATORI, NRI-HKG, and NRI-JAPAN, directly and through their agents, started interfering in the existing and potential economic relations between Plaintiff VEDATECH-JAPAN and various existing and potential customers. In or around July 1997, TAKATORI sent a letter to KLOPKER at QAD-USA denigrating the business reputation and competence of Plaintiffs.

374 In or around July of 1997, DOORDAN and NRI-JAPAN, directly and through their agents, started contacting customers and potential customers of VEDATECH-JAPAN with the purpose of diverting their business away from VEDATECH-JAPAN, and with the full knowledge that QAD-USA was contractually committed to promoting such business for the benefit of VEDATECH-JAPAN.

375 Defendants DOORDAN, TAKATORI, NRI-HKG, NRI-JAPAN and one or more DOES 1-50 involved in this conspiracy were fully aware of the nature and details of the existing and potential contractual relations between QAD-USA and Plaintiffs, and other relationships between customers and Plaintiffs. Said defendants knowingly, willingly and/or negligently acted to harm Plaintiffs with the full knowledge of such relationships.

376 In June 1997, DOORDAN and LEE traveled to Japan to meet with Plaintiff SUBRAMANIAN and with the common purpose of attempting to force the resignation of SUBRAMANIAN from OLD-QAD-JAPAN. When such attempts failed, DOORDAN and LEE arranged for an "investigation" by ANDERSEN, ostensibly in preparation for the IPO. Furthermore, ANDERSEN prepared a final report in September 1997 and

1 published it with the full knowledge of its false statements and misrepresentations that
2 were part of this final report.

3 377 Further, ANDERSEN, in concert with DOORDAN, LEE and one or more DOES
4 1-50, participated in the setting up of bank accounts in possible violations of criminal
5 laws of Japan, all for the purpose of aiding DOORDAN and LEE in their attempts to
6 force the resignation of SUBRAMANIAN from OLD-QAD-JAPAN. Such causation of
7 resignation was the first step in DOORDAN's attempts to deprive Plaintiffs of the
8 benefits of the existing and potential relationships with QAD-USA and other existing and
9 potential customers of VEDATECH-JAPAN.
10

11 378 Defendants DOORDAN, LEE, ANDERSEN, and one or more DOES 1-50
12 involved in this conspiracy were fully aware of the nature and details of the existing and
13 potential contractual relations between QAD-USA and Plaintiffs, and other relationships
14 between customers and Plaintiffs. Said defendants knowingly, willingly, and/or
15 negligently acted to harm Plaintiffs with the full knowledge of such relationships.
16

17 379 As a proximate result of these activities of DOORDAN, TAKATORI, NRI-HKG,
18 NRI-JAPAN, and one or more of DOES 1-50, Plaintiffs have sustained and continue to
19 sustain actual damages in an amount of the jurisdictional limits of this Court, and to be
20 determined at trial.

21 380 From August 1999 onwards, DOORDAN, NEW-QAD-JAPAN, QAD-USA, and
22 one or more DOES 1-50 worked in concert to divert existing and potential business from
23 existing and potential customers of VEDATECH-JAPAN.
24

25 381 From August 1999 onwards, DOORDAN, NEW-QAD-JAPAN, QAD-USA and
26 one or more DOES 1-50 worked in concert to divert existing and potential business from
27 existing potential customers of OLD-QAD-JAPAN, thereby making the value of Plaintiff
28 SUBRAMANIAN's share in OLD-QAD-JAPAN become worthless.

1 382 Defendants DOORDAN, NEW-QAD-JAPAN, QAD-USA and one or more DOES
 2 1-50 involved in this conspiracy were fully aware of the nature and details of the existing
 3 and potential contractual relations between QAD-USA and Plaintiffs, other relationships
 4 between customers and Plaintiffs, and the share ownership of Plaintiff SUBRAMANIAN
 5 in OLD-QAD-JAPAN. Said defendants knowingly, willingly, and/or negligently acted
 6 to harm Plaintiffs with the full knowledge of such relationships.

7 FIRST CAUSE OF ACTION

8 (Breach of Contract)

9
 10 383 Plaintiffs repeat the allegations of the previous paragraphs, and incorporate them
 11 as if fully set forth herein.

12
 13 384 The conduct undertaken by QAD-USA constitutes a breach of written and oral
 14 agreements between QAD-USA and Plaintiffs.

15 385 Such conduct also constitutes a breach of the agreements between OLD-QAD-
 16 JAPAN and SUBRAMANIAN.

17
 18 386 Except to the extent excused by acts of Defendants, Plaintiffs have performed all
 19 conditions, covenants, and promises required on their behalf to be performed in
 20 accordance with the terms and conditions of the agreements.

21 Damages

22
 23 387 As a proximate result of QAD-USA's (and OLD-QAD-JAPAN's) breach of
 24 contract, Plaintiffs have sustained and continue to sustain actual damages in an amount in
 25 excess of the jurisdictional limits of this Court, and to be determined at trial.

26 388 In addition, Plaintiffs are entitled to incidental damages flowing from the breach
 27 plus interests and costs.

1 SECOND CAUSE OF ACTION

2 (Breach of covenant of Good Faith and Fair Dealing)

3
4 389 Plaintiffs repeat the allegations of the previous paragraphs, and incorporate them
5 as if fully set forth herein.

6 390 Implied in the above-described agreements was a covenant that QAD-USA would
7 act in good faith and deal fairly with Plaintiffs and do nothing to deprive Plaintiffs of the
8 benefits of the agreements and that QAD-USA shall do nothing to destroy Plaintiffs'
9 business.

10
11 391 Implied in the above-described agreements was a covenant that OLD-QAD-
12 JAPAN would act in good faith and deal fairly with Plaintiffs and do nothing to deprive
13 Plaintiffs of the benefits of the agreements and that OLD-QAD-JAPAN shall do nothing
14 to destroy Plaintiffs' business.

15 392 QAD-USA, by its actions and the actions of its agents or others ostensibly on its
16 behalf, breached this covenant.

17
18 393 OLD-QAD-JAPAN by its actions and the actions of its agents or others ostensibly
19 on its behalf, breached this covenant.

20 Damages

21
22 394 As a proximate result of QAD-USA's bad faith breach of its implied obligations,
23 Plaintiffs have sustained and continue to sustain actual damages in an amount in excess of
24 the jurisdictional limits of this Court, and to be determined at trial.

25 395 As a proximate result of OLD-QAD-JAPAN's bad faith breach of its implied
26 obligations, Plaintiffs have sustained and continue to sustain actual damages in an amount
27 in excess of the jurisdictional limits of this Court, and to be determined at trial.
28

THIRD CAUSE OF ACTION

(Fraud)

396 Plaintiffs repeat the allegations of all of the previous paragraphs, and incorporate them as if fully set forth herein.

Fraud committed by DOORDAN and QAD-USA with respect to promises of contract formalization

397 DOORDAN, and QAD-USA (because it ratified the actions of DOORDAN sometime in or around 1998, and after the breakdown in the relations between the parties), and some or all of DOES 1-50, as alleged above, fraudulently represented to SUBRAMANIAN and VEDATECH-JAPAN that the various oral agreements would be formalized and the relationship would continue for at least several more years on the terms and conditions understood by the parties in their various dealings over the years from 1994 and from the initial basis of the March Agreement.

398 DOORDAN, and QAD-USA (because it ratified the actions of DOORDAN sometime in or around 1998, and after the breakdown in the relations between the parties), and some or all of DOES 1-50, as alleged above, fraudulently represented to SUBRAMANIAN and VEDATECH-JAPAN that a proper lump-sum severance in lieu of QAD-USA honoring its contractual and promissory commitments would be provided and thus induced Plaintiffs to continue to provide services to QAD-USA even after the troubles created by DOORDAN started becoming critical in or around August 1997.

399 Such defendants knew at the time of making such statements (except possibly QAD-USA which became liable at the time it ratified the actions of DOORDAN et. al. later) that they were false and that they had no intention of facilitating such an arrangement. To the contrary, DOORDAN and some such DOES 1-50 clearly planned to

1 destroy the relationship between Plaintiffs and QAD-USA at the time of making such
2 statements.

3 400 Plaintiffs, in reliance upon such false assurances, continued to provide services
4 under such implied terms and with expectations of the proper consideration for such
5 efforts, failed to take corrective actions or make alternate plans, and suffered damages as
6 a direct consequence of such reliance.

7
8 401 Furthermore, although QAD-USA, and KLOPKER may not have intended to make
9 such false assurances or deceive Plaintiffs before the breakdown of the relationship,
10 QAD-USA is nevertheless liable for the actions of its officers and senior executives such
11 as DOORDAN, other executives such as SPRUIT and other DOES 1-50 in similar
12 positions.

13
14 **Proximate Harm and Damage**

15 402 As a proximate result of Defendant DOORDAN's and Defendant QAD-USA's
16 conduct, Plaintiffs have sustained and continue to sustain actual damages in an amount in
17 excess of the jurisdictional limits of this Court, and to be determined at trial.

18
19 **Fraud relating to the activities of LAI FOON LEE**

20 403 Information regarding LEE, the reasons why she acted for her personal benefit,
21 and the various false representations she made and upon which Plaintiffs relied to their
22 detriment are all set out above and partially summarized below..

23
24 **The fraudulent Statements**

25 404 LEE told SUBRAMANIAN that an audit by a professional outside auditor such as
26 ANDERSEN was an essential and formal requirement for the IPO process, (a false
27 statement but not known to SUBRAMANIAN as false at that time), and that an internal
28

1 check, even if it was thorough would not be enough for the due diligence steps required
2 in preparing for the IPO.

3 405 LEE further told SUBRAMANIAN that ANDERSEN would conduct the audit in
4 an impartial and professional way, and that was the real value of the audit and which is
5 why it was essential as a preparatory step for the IPO. LEE further told
6 SUBRAMANIAN that unlike an internal audit, she would have no influence on the
7 outcome of the Andersen audit and that SUBRAMANIAN would thus have no reason to
8 complain whichever way the audit results came out.

9
10 406 Furthermore, LEE specifically told SUBRAMANIAN that ANDERSEN was
11 indispensable as they were working with QAD-USA in California in a centralized and
12 coordinated fashion, and for the purposes of the IPO, QAD-USA cannot complete its due
13 diligence processes without the official clearance of ANDERSEN.

14 407 At all times, LEE knew that the representations she was making to with respect to
15 the audit, the function of ANDERSEN, and the representation that it was necessary to
16 have ANDERSEN do the audit for the purposes of preparation for the IPO, and her own
17 expressed and purported commitment not to interfere with the integrity of the audit (either
18 before, during or after the audit) were all false.

19
20 408 The primary reason for LEE to have this audit was to find a way to denigrate the
21 character of SUBRAMANIAN and VEDATECH-JAPAN and in that way cause QAD-
22 USA to terminate its relationship with Plaintiffs. This would help her status inside QAD-
23 USA as someone who came in from outside and found out all these serious problems
24 caused under WHATLEY and help her quickly advance her personal career inside QAD-
25 USA. LEE upon the instigation of DOORDAN, and in conspiracy with him and
26 ANDERSEN, saw this as an easy way of achieving such goals.

1 409 In order to achieve this, LEE (and ANDERSEN) fraudulently induced Plaintiffs to
2 agree to the audit by ANDERSEN without Plaintiffs realizing that the result were pre-
3 ordained and without realizing that LEE had made these assurances falsely and had no
4 intention of keeping her promises as made and as described herein.

5 410 Finally, LEE was behind the other assurances provided by RANEY and
6 ANDERSEN directly to Plaintiffs, and by working in concert with and in conspiracy with
7 ANDERSEN is liable for such false assurances.

8
9 **Plaintiffs's Reliance on LEE's Statements**

10 411 Plaintiffs specifically relied upon these false assurances and statements (i.e., the
11 necessity of the audit for the IPO process, the necessity of ANDERSEN of the Los
12 Angeles office, the impartiality of LEE and ANDERSEN and the assurance that LEE
13 would in no way interfere with the integrity of the functioning of the audit process, and,
14 upon further assurances by Mr. Dennis Raney of QAD-USA and ANDERSEN (also in
15 conspiracy with LEE), agreed to the process.

16
17 412 But for such fraudulent representations by LEE and ANDERSEN, Plaintiffs would
18 not have given their permission to have QAD-JAPAN be audited by ANDERSEN in this
19 fashion and would have found alternate ways of establishing their credibility (such as
20 getting concurrence of a full and thorough check by a respected QAD-USA manager such
21 as Mr. Dale Akita), or through the services of KPMG-Japan or other impartial third-party
22 auditor).

23 413 Instead, Plaintiffs proceeded with the audit with ANDERSEN because of the fact
24 that LEE and ANDERSEN had so induced Plaintiffs with their false and fraudulent
25 statements described herein.

26
27 414 Plaintiffs's reliance was justified given the relationship between the parties.

28

1 Proximate Harm and Damage

2 415 As a proximate result of Defendant LEE's conduct (and the conduct of
3 ANDERSEN and DOORDAN both independently of and in conspiracy with LEE),
4 Plaintiffs have sustained and continue to sustain actual damages in an amount in excess of
5 the jurisdictional limits of this Court, and to be determined at trial.
6

7 416 Such damages relate to the termination of the relationship between Plaintiffs and
8 QAD-USA on one hand, and Plaintiffs and QAD-JAPAN on the other, all as described
9 more fully herein.
10

11 Conspiracy in relation to LEE's fraudulent activities

12 417 LEE, DOORDAN and some of the DOES 1-50 conspired in at least some or all of
13 the fraudulent activities described herein.
14

15 418 LEE, ANDERSEN and some of the DOES 1-50 conspired in at least some or all of
16 the fraudulent activities described herein.
17

18 419 LEE, DOORDAN, ANDERSEN, and some of the DOES 1-50 conspired in at least
19 some or all of the fraudulent activities described herein.
20

21 420 LEE, DOORDAN, ANDERSEN, NEW-QAD-JAPAN and some of the DOES 1-
22 50 conspired in at least some or all of the fraudulent activities described herein.
23

24 421 LEE, DOORDAN, ANDERSEN and the DOES 1-50 that participated in such
25 conspiracies are individually liable in full for the fraudulent activities described herein.
26

27 Duty of ANDERSEN towards the Plaintiffs

28 422 ANDERSEN was hired by OLD-QAD-JAPAN and/or Plaintiffs NOT in order to
conduct an "audit" of OLD-QAD-JAPAN, in its usual sense of the word and in the sense
used in the auditor liability cases that ANDERSEN has been trying to rely on, i.e. either

1 as a part of a public auditing function or as an attempt to obtain an audit report to be used
2 with outside parties. Rather, ANDERSEN had the following relationships with Plaintiffs:

3 422.01 As a professional body and as certified public accountants, they have a
4 duty when providing accounting or auditing-related services, toward their clients,
5 the Client's principals and others that are directly and foreseeably affected by the
6 professional services of such public accountants. Knowing the exact nature of the
7 relationship between the Plaintiffs and QAD-USA among others, ANDERSEN
8 could easily foresee the results of actions such as breaching their own "Chinese
9 wall", their own false promises, the effect of such false promises and the effect of
10 falsifying or participating in falsifying reports, and the effect such acts may have
11 on Plaintiffs.

12 422.02 Plaintiffs were clearly intended third-party beneficiaries of the "audit"
13 engagement that ANDERSEN undertook with OLD-QAD-JAPAN, which
14 ANDERSEN undertook with the explicit permission from and concurrence of
15 Plaintiffs, which permission and concurrence were obtained by the fraudulent
16 representations detailed herein.

17 422.03 In its dual role as public accountants licensed by the state and as an
18 agent of QAD-USA in its efforts to investigate OLD-QAD-JAPAN (as admitted at
19 least in one written communications by ANDERSEN,) ANDERSEN assumed all
20 the duty of care and fiduciary obligations that QAD-USA had towards Plaintiffs.

21 422.04 General duties of care as per California Civil Code and California law,
22 and other duties as set above in the allegations and as it is required of ANDERSEN
23 by California Law arising from the special and prior/ongoing relationship between
24 ANDERSEN and Plaintiffs, and the clear foreseeability of harm to Plaintiffs by the
25 actions undertaken by ANDERSEN, such as making false promises and creating
26 false reports, all for the promotion of its own self-interest.
27
28

1 422.05 Furthermore, since ANDERSEN did all of this in order to curry favor
 2 with LEE, DOORDAN and others at QAD-USA in order to get more business
 3 from a company that was in the process of doing an IPO, the duty of care becomes a
 4 matter of much more seriousness and cannot be made light of.

5
 6 **Fraud relating to the accounting services provided by ANDERSEN**

7 423 ANDERSEN knew clearly the relationship between QAD-USA,
 8 SUBRAMANIAN and VEDATECH-JAPAN.

9 424 CHIBA of ANDERSEN as alleged above falsely provides assurances to
 10 SUBRAMANIAN that if hired by OLD-QAD-JAPAN to provide accounting services for
 11 the same, it would do nothing to harm the interests of OLD-QAD-JAPAN or its
 12 principals, shareholders or directors, or to Plaintiffs, and knew at the time of providing
 13 those assurances that such assurances would be honored in the breach.
 14

15 425 In reliance upon such false assurances, SUBRAMANIAN extended the services of
 16 ANDERSEN in the accounting function in spite of the conflict of interest presented by
 17 ANDERSEN providing both accounting and audit-like functions.

18 426 As a result of such reliance, Plaintiffs were compromised in not being able to
 19 prevent or avoid the issuance of and dissemination of incorrect statements made by
 20 CHIBA and his subordinates, all so made under the color of authority and authenticity
 21 lent by the continuing appointment and position as accountants for OLD-QAD-JAPAN.
 22

23 427 ANDERSEN's Los Angeles office used such statements to prepare and justify
 24 various false statements made in the final report that was unfairly and falsely derogatory
 25 of Plaintiffs and their services and business reputation and integrity.

26 428 As a direct and proximate result of such reliance of Plaintiffs resulting in the
 27 ability of ANDERSEN to proceed to prepare such false reports, Plaintiffs have suffered
 28

1 injuries relating to the breakdown of the relations with QAD-USA, accompanied by a
 2 breakdown in the existing and prospective business and economic relations between
 3 Plaintiffs and other customers

4
 5 **Conspiracy to commit fraud**

6 429 DOORDAN, LEE, QAD-USA, ANDERSEN and one or more of DOES 1-50
 7 conspired to provide the false assurances (in or around July 1997) detailed above and are
 8 thus each individually liable in full for the damages caused thereof.

9
 10 **Fraud relating to the investigation conducted by ANDERSEN**

11 430 ANDERSEN knew clearly the relationship between QAD-USA,
 12 SUBRAMANIAN and VEDATECH-JAPAN.

13 431 In July 1997, as pleaded more fully above, ANDERSEN, while planning in concert
 14 with DOORDAN and LEE to create a report damaging to Plaintiffs, falsely provided
 15 assurances that their investigation will be conducted to professional standards.

16
 17 432 In addition, at the completion of the audit, AKIKO provided additional assurance
 18 that the results of the audit were good and that SUBRAMANIAN did not have to worry
 19 about any negative reports being written up on that account.

20 433 SUBRAMANIAN in reliance upon such false assurances also forewent the option
 21 of having someone such as AKITA do a full thorough and exhaustive check of QAD-
 22 JAPAN's accounts and thus exonerate Plaintiffs and forewent the option of having
 23 someone such as KPMG-Japan do the audit and thus avoid the fallout from the negative
 24 results. SUBRAMANIAN, in reliance on such false assurances also did not take actions
 25 to finalize the written agreements with KLOPKER or others at QAD-USA.
 26

27 434 As a result of such reliance, the false reports created widespread mistrust in
 28 SUBRAMANIAN and VEDATECH-JAPAN inside QAD-USA and contributed to QAD-

1 USA's eventual termination of SUBRAMANIAN from his position and the breach of
 2 QAD-USA's oral agreements with Plaintiffs and its decision not to proceed with
 3 formalizing the same.

4 435 Independent of the false reports themselves, the ill-will created by the
 5 controversies and the disputes relating to the report and the conduct of the "investigation"
 6 by themselves also contributed to the deterioration and eventual termination of the
 7 relationship between Plaintiffs and QAD-USA.
 8

9 Conspiracy to commit fraud

10 436 DOORDAN, LEE, ANDERSEN, and one or more of DOES 1-50 conspired to
 11 commit the fraud alleged above and worked in concert as more fully alleged in the
 12 various paragraphs above and hence are each individually liable in full for the damages
 13 caused thereof.
 14

15 437 DOORDAN, LEE, ANDERSEN, NEW-QAD-JAPAN and one or more of DOES
 16 1-50 conspired to commit the fraud alleged above and worked in concert as more fully
 17 alleged in the various paragraphs above and hence are each individually liable in full for
 18 the damages caused thereof. The conspiracy between these parties to commit fraud on the
 19 Plaintiffs caused severe damages to Plaintiffs.
 20

21 Damages

22 438 As a direct and proximate result of such reliance of Plaintiffs of the false promises
 23 of ANDERSEN, LEE, (DOORDAN), and others, Plaintiffs have suffered injuries relating
 24 to the breakdown of the relations with QAD-USA, accompanied by a breakdown in the
 25 existing and prospective business and economic relations between Plaintiffs and other
 26 customers and further consequential and/or incidental damages.
 27
 28

439 As a proximate result of such fraudulent conduct by these Defendants, Plaintiffs
 440 have sustained and continue to sustain actual damages in an amount in excess of the
 441 jurisdictional limits of this Court, and to be determined at trial.

442 The acts and conduct of Defendants were oppressive, fraudulent, and malicious.
 443 Defendants knew or should have known that their conduct would harm Plaintiffs. Their
 444 actions were undertaken for the specific purpose of enriching themselves at Plaintiffs'
 445 expense. Plaintiffs therefore seek, and are entitled to recover, punitive and exemplary
 446 damages in the amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Constructive Fraud)

441 Plaintiffs repeat the allegations of the previous paragraphs, and incorporate them
 442 as if fully set forth herein.

443 The duties of QAD-USA towards Plaintiffs arise from the contractual relationships
 444 they maintained over a period of years.

445 The acts of QAD-USA alleged above relating to Fraud amount to acts of
 446 Constructive Fraud. QAD-USA's duties of care towards Plaintiffs are set out above.

447 Furthermore, QAD-USA, as detailed above is also responsible for the fraudulent
 448 activities of DOORDAN, LEE and some DOES 1-50 as it ratified the actions of these
 449 senior managers after the breakdown of the relationship between the parties, and even
 450 though DOORDAN, LEE and such DOES 1-50 acted for their personal benefit.

451 The duty of ANDERSEN toward Plaintiffs and the special circumstances of the
 452 relationship between Plaintiffs and ANDERSEN are set out above.

A 2920

1 446 The actions of ANDERSEN alleged above, in light of these duties of care, amount
2 to acts of Constructive Fraud.

3 447 DOORDAN and LEE, while acting for their personal benefit nevertheless owed a
4 duty towards Plaintiffs not to harm them arising from the California tests outlined in the
5 *Biakanja* case.

6
7 448 The actions of DOORDAN and LEE alleged above, in light of these duties of care,
8 amount to acts of Constructive Fraud.

9 449 The actions of QAD-USA alleged above, in light of these duties of care, amount to
10 acts of Constructive Fraud.

11
12 **Conspiracy regarding Constructive Fraud**

13 450 DOORDAN, LEE, ANDERSEN and one or more of DOES 1-50 conspired to
14 commit the fraud alleged above and worked in concert as more fully alleged in the
15 various paragraphs above and hence are each individually liable in full for the damages
16 caused thereof.

17
18 451 DOORDAN, LEE, ANDERSEN, NEW-QAD-JAPAN and one or more of DOES
19 1-50 conspired to commit the fraud alleged above and worked in concert as more fully
20 alleged in the various paragraphs above and hence are each individually liable in full for
21 the damages caused thereof.

22 **Damages**

23
24 452 As a proximate result of such conduct by these Defendants, Plaintiffs have
25 sustained and continue to sustain actual damages in an amount in excess of the
26 jurisdictional limits of this Court, and to be determined at trial.

27
28 A 2921

1 453 The acts and conduct of Defendants were oppressive, fraudulent, and malicious.
 2 Defendants knew or should have known that their conduct would harm Plaintiffs. Their
 3 actions were undertaken for the specific purpose of enriching themselves at Plaintiffs'
 4 expense. Plaintiffs therefore seek, and are entitled to recover, punitive and exemplary
 5 damages in the amount to be determined at trial.

6 7 FIFTH CAUSE OF ACTION

8 (Negligent misrepresentation)

9
10 454 Plaintiffs repeat the allegations of all of the earlier paragraphs and incorporate
11 them as if fully set forth herein.

12 455 The duties of each of the defendants towards the Plaintiffs are as set out above.
13 Specifically, the duties of QAD-USA and those of ANDERSEN are alleged above.

14
15 456 The facts relating to DOORDAN and LEE acting for their personal benefit are set
16 out above.

17 457 DOORDAN and LEE, while acting for their personal benefit nevertheless owed a
18 duty towards Plaintiffs not to harm them arising from the California tests outlined in the
19 *Biakanja* case.

20
21 458 The actions of DOORDAN regarding the promises of a contract and subsequently
22 enjoying the benefits of the efforts of Plaintiffs in reliance upon such promises, in light of
23 the damages caused by the same to Plaintiffs, arise at least to the level of Negligent
24 Misrepresentation.

25 459 The actions of QAD-USA (through ratification of the actions of DOORDAN, et.
26 al.) regarding the promises of a contract and subsequently enjoying the benefits of the
27

1 efforts of Plaintiffs in reliance upon such promises, in light of the damages caused by the
 2 same to Plaintiffs, arise at least to the level of Negligent Misrepresentation.

3 460 The actions of ANDERSEN regarding the promises of professional conduct, and a
 4 professional and truthful report, in light of the duties owed by ANDERSEN to Plaintiffs
 5 as detailed above and the damages caused to Plaintiffs in reliance upon such promises,
 6 arise at least to the level of Negligent Misrepresentation.
 7

8 461 The actions of LEE regarding the promises of ANDERSEN's professional conduct,
 9 and a professional and truthful report, her own promises of non-interference in the
 10 impartiality of the report, her promises of the necessity of having such an audit in the first
 11 place, and the necessity of using ANDERSEN of Los Angeles for such an audit, all in
 12 light of the duties owed by LEE to Plaintiffs as detailed above and the damages caused to
 13 Plaintiffs in reliance upon such promises, arise at least to the level of Negligent
 14 Misrepresentation.
 15

16 Damages

17
 18 462 As a proximate result of Defendants' conduct, Plaintiffs have sustained and
 19 continue to sustain actual damages in an amount in excess of the jurisdictional limits of
 20 this Court, and to be determined at trial.
 21

22 SIXTH CAUSE OF ACTION

23 (Intentional Interference in Contractual Relations and Business Advantage)

24
 25 463 Plaintiffs repeat the allegations of the previous paragraphs and incorporate them as
 26 if fully set forth herein.
 27
 28

1 464 Defendants DOORDAN, TAKATORI, NRI-HKG, NRI-JAPAN, LEE,
2 ANDERSEN, NEW-QAD-JAPAN and DOES 1-50 undertook actions as alleged above,
3 and were so undertaken with the knowledge of Plaintiff VEDATECH-JAPAN's
4 contractual and /or business relationship with QAD-USA and OLD-QAD-JAPAN.

5 465 Defendants DOORDAN, TAKATORI, NRI-HKG, NRI-JAPAN, LEE,
6 ANDERSEN, QAD-USA, NEW-QAD-JAPAN and DOES 1-50 undertook actions as
7 alleged above, and were so undertaken with the knowledge of Plaintiff VEDATECH-
8 JAPAN's contractual and /or business relationship with OLD-QAD-JAPAN, and with the
9 knowledge of the relationship of Plaintiffs with their customers, and of Plaintiff
10 VEDATECH's existing employment and / or business relationships with its employees
11 and other consultants.
12

13 466 The actions of Defendants ANDERSEN, DOORDAN, LEE, TAKATORI, NRI-
14 HKG, NRI-JAPAN, NEW-QAD-JAPAN and some DOES 1-50 were intended to cause
15 QAD-USA to breach its contract and/or agreement and/or business relationship with
16 VEDATECH-JAPAN and to cause OLD-QAD-JAPAN to breach its contract and/ or
17 agreement and/ or business relationship with SUBRAMANIAN and did so cause such
18 terminations.

19 467 The actions of Defendants QAD-USA, NEW-QAD-JAPAN, TAKATORI, NRI-
20 HKG, NRI-JAPAN, DOORDAN, and some DOES 1-50 were intended to cause
21 customers of VEDATECH-JAPAN to terminate their contracts and/or agreement and/or
22 business relationship with VEDATECH-JAPAN and did so cause such terminations.
23

24 468 DOORDAN's actions relating to these were taken for his own personal benefit and
25 thus make him liable for actions purportedly taken in his official capacity and purportedly
26 for the benefit of QAD-USA.
27

28 A 2924

1 469 These included, without limitation, his goals of reversing his being sidelined in the
 2 QAD-USA management line-up in the executive shuffle taking place before the IPO, and
 3 to promote his personal goal of adding a senior position in Japan on his resume to round
 4 out his Asia-Pacific experience (in the achievement of which he saw Plaintiffs as a
 5 roadblock).

6 470 LEE's actions, as described more fully above were also taken to further her
 7 personal goals, these including casting the prior management efforts of WHATLEY in a
 8 bad light in order to reduce WHATLEY's influence and promote LEE's influence,
 9 sacrifice Plaintiffs in order to show the Lopkers how valuable she was in the IPO process
 10 and assure a better position post-IPO (when QAD-USA was expected to be flush with
 11 cash and opportunities), etc.

12
 13 471 TAKATORI's actions, as describe more fully above were taken to further his own
 14 personal goals, including promoting himself in the eyes of the parent NRI-JAPAN and
 15 ensuring a better career either in the NRI group or in looking for another job upon leaving
 16 NRI-HKG.

17 472 While NRI-HKG is liable for his actions as it ratified TAKATORI's actions,
 18 TAKATORI's actions are nevertheless outside the scope of his duties as President of
 19 NRI-HKG and were meant to promote his personal interests.

20
 21 473 NRI-JAPAN is also liable for the actions of TAKATORI as TAKATORI still was
 22 officially employed by NRI-JAPAN and, in addition, NRI-JAPAN ratified the actions of
 23 TAKATORI and voluntarily benefitted from such actions.

24 Conspiracy to interfere intentionally in contractual relations and business
 25 advantage

26
 27 474 DOORDAN, LEE, ANDERSEN, NEW-QAD-JAPAN and one or more DOES 1-
 28 50 conspired in some or all of the actions alleged above and acted in concert resulting in

1 the damages thereof. Each and every one of them is thus responsible individually for the
2 entire liability of all the others.

3 475 DOORDAN, QAD-USA, NEW-QAD-JAPAN, TAKATORI, NRI-HKG, and NRI-
4 JAPAN and one or more DOES 1-50 conspired in some or all of the actions alleged above
5 and acted in concert resulting in damages thereof. Each and every one of them is thus
6 responsible individually for the entire liability of all the others.
7

8 Damages

9 476 As a proximate result of these actions by defendants, Plaintiffs have sustained and
10 continue to sustain actual damages in an amount in excess of jurisdictional limits of this
11 Court, and to be determined at trial.
12

13 477 The acts and conduct of Defendants were oppressive, fraudulent, and malicious.
14 Defendant knew or should have known that their conduct would harm Plaintiffs. Their
15 actions were undertaken for the specific purpose of enriching themselves at Plaintiffs'
16 expense. Plaintiffs therefore seek, and are entitled to recover, punitive and exemplary
17 damages in the amount to be determined at trial.
18

19 SEVENTH CAUSE OF ACTION

20 (Negligent Interference in Contractual Relations and Business Advantage)

21 478 Plaintiffs repeat the allegations of all the paragraphs above and incorporate them
22 as if fully set forth herein.
23

24 479 The duties of each of the defendants towards the Plaintiffs are as set out herein.
25

26 480 The facts relating to DOORDAN and LEE acting for their personal benefit are set
27 out above. DOORDAN and LEE, while acting for their personal benefit nevertheless
28

1 owed a duty towards Plaintiffs not to harm them arising from the California tests outlined
2 in the *Biakanja* case.

3 481 TAKATORI, NRI-HKG and NRI-JAPAN were in the process of discussing a
4 partnership with OLD-QAD-JAPAN and a separate partnership with Plaintiffs relating to
5 the MFG/PRO business in Japan. They were clearly aware of the relationship between
6 Plaintiffs and QAD-USA and OLD-QAD-JAPAN. The relationship between Plaintiffs
7 and these NRI defendants (including TAKATORI) gave rise to a duty of care under the
8 California rules outlined in the *Biakanja* case.
9

10 482 TAKATORI, while acting for his personal benefit nevertheless owed a duty
11 towards Plaintiffs not to harm them arising from his being a senior executive of both
12 NRI-HKG and NRI-JAPAN and the California tests outlined in the *Biakanja* case.

13 483 The actions of defendants DOORDAN, LEE, TAKATORI, NRI-HKG, and NRI-
14 JAPAN, in light of these duties and the damages caused to Plaintiffs by their actions, rise
15 at least to the level of Negligent Interference in Contractual Relations and Business
16 Advantage as it relates to the relations between QAD-USA and Plaintiffs and the relations
17 between OLD-QAD-JAPAN and SUBRAMANIAN.
18

19 484 The actions of defendant ANDERSEN, in light of their duties to Plaintiffs and the
20 damages caused to Plaintiffs by their actions, rise at least to the level of Negligent
21 Interference in Contractual Relations and Business Advantage as it relates to the relations
22 between QAD-USA and Plaintiffs and the relations between OLD-QAD-JAPAN and
23 SUBRAMANIAN, and consequentially the relations between Plaintiffs and their other
24 customers relating to the MFG/PRO business.

25 485 The actions of defendants QAD-USA, DOORDAN, LEE, TAKATORI, NRI-
26 HKG, and NRI-JAPAN, in light of these duties and the damages caused to Plaintiffs by
27 their actions, rise at least to the level of Negligent Interference in Contractual Relations
28

1 and Business Advantage as it relates to the relationship between Plaintiffs and their then
2 existing customers relating to the MFG/PRO business.

3 **Damages**

4
5 486 As a proximate result of these actions by defendants, Plaintiffs have sustained and
6 continue to sustain actual damages in an amount in excess of jurisdictional limits of this
7 Court, and to be determined at trial.

8
9 487 The acts and conduct of Defendants were oppressive, fraudulent, and malicious.
10 Defendant knew or should have known that their conduct would harm Plaintiffs. Their
11 actions were undertaken for the specific purpose of enriching themselves at Plaintiffs'
12 expense. Plaintiffs therefore seek, and are entitled to recover, punitive and exemplary
13 damages in the amount to be determined at trial.

14 **EIGHTH CAUSE OF ACTION**

15 **(Intentional Interference with Prospective Economic Advantage)**

16 488 Plaintiffs repeat the allegations of all of the above paragraphs and incorporate
17 them as if fully set forth herein.

18
19 489 The facts relating to DOORDAN and LEE acting for their personal benefit are set
20 out above.

21
22 490 Defendants DOORDAN, LEE, ANDERSEN, NEW-QAD-JAPAN, NRI-JAPAN,
23 NRI-HKG., TAKATORI, and DOES 1-50's actions alleged above were done with the
24 knowledge of Plaintiffs' economic relationships between Plaintiff VEDATECH-JAPAN
25 and QAD-USA and OLD-QAD-JAPAN (especially additional business with such existing
26 customers).

27 A 2928

491 Defendants DOORDAN, LEE, ANDERSEN, QAD-USA, NEW-QAD-JAPAN,
 492 NRI-JAPAN, NRI-HKG, TAKATORI, and DOES 1-50's actions alleged above were
 done with the knowledge of Plaintiffs' economic relationships between Plaintiff
 VEDATECH-JAPAN and its existing customers (especially additional business with such
 existing customers) and potential customers and prospects.

492 Defendant's actions disrupted those relationships and potential relationships.

Conspiracy to interfere intentionally in prospective economic advantage

493 DOORDAN, LEE, ANDERSEN, NEW-QAD-JAPAN and one or more DOES 1-
 50 conspired in the actions alleged above and acted in concert resulting in the damages
 thereof relating to intentional interference in prospective economic advantage. Each and
 every one of them is thus responsible individually for the entire liability of all the others.

494 DOORDAN, LEE, QAD-USA, NEW-QAD-JAPAN, TAKATORI, NRI-HKG,
 NRI-JAPAN, and one or more DOES 1-50 conspired in some or all of the actions alleged
 above and acted in concert resulting in the damages thereof relating to intentional
 interference in prospective economic advantage. Each and every one of them is thus
 responsible individually for the entire liability of all the others.

Damages

495 As a proximate result of these actions by DOORDAN, LEE, QAD-USA, NEW-
 QAD-JAPAN, TAKATORI, NRI-HKG, and NRI-JAPAN, Plaintiffs have sustained and
 continue to sustain actual damages in an amount in excess of jurisdictional limits of this
 Court, and to be determined at trial.

496 The acts and conduct of Defendants were oppressive, fraudulent, and malicious.
 Defendant knew or should have known that their conduct would harm Plaintiffs. Their
 actions were undertaken for the specific purpose of enriching themselves at Plaintiffs'

1 expense. Plaintiffs therefore seek, and are entitled to recover, punitive and exemplary
2 damages in the amount to be determined at trial.

3 4 NINTH CAUSE OF ACTION

5 (Negligent Interference with Prospective Economic Advantage)

6
7 497 Plaintiffs repeat the allegations of all the paragraphs above and incorporate them
8 as if fully set forth herein.

9 498 The duties of each of the defendants, including DOORDAN, LEE, QAD-USA,
10 ANDERSEN, TAKATORI, NRI-HKG, and NRI-JAPAN towards the Plaintiffs are as set
11 out above /herein.

12
13 499 The facts relating to DOORDAN, LEE and TAKATORI acting for their personal
14 benefit are set out above.

15 500 The actions of defendants ANDERSEN, DOORDAN, LEE, TAKATORI, NRI-
16 HKG, and NRI-JAPAN, in light of their duties towards Plaintiffs and the damages caused
17 to Plaintiffs by their actions, rise at least to the level of Negligent Interference in
18 Prospective Economic Advantage as it relates to the relations between QAD-USA and
19 Plaintiffs and the relations between OLD-QAD-JAPAN and SUBRAMANIAN, and
20 consequentially the relations between Plaintiffs and their prospective customers (and
21 prospective new business from existing customers) relating to the MFG/PRO business.

22
23 501 The actions of defendants QAD-USA, DOORDAN, LEE, TAKATORI, NRI-
24 HKG, and NRI-JAPAN, in light of these duties and the damages caused to Plaintiffs by
25 their actions, rise at least to the level of Negligent Interference in Prospective Economic
26 Advantage as it relates to the relationship between Plaintiffs and their prospective
27 customers (and prospective new business from existing customers) relating to the
28 MFG/PRO business.

1 502 Defendants' negligent actions disrupted those and other potential relationships.

2 Damages

3
4 503 As a proximate result of these actions by defendants, Plaintiffs have sustained and
5 continue to sustain actual damages in an amount in excess of jurisdictional limits of this
6 Court, and to be determined at trial.

7 504 The acts and conduct of Defendants were oppressive, fraudulent, and malicious.
8 Defendant knew or should have known that their conduct would harm Plaintiffs. Their
9 actions were undertaken for the specific purpose of enriching themselves at Plaintiffs'
10 expense. Plaintiffs therefore seek, and are entitled to recover, punitive and exemplary
11 damages in the amount to be determined at trial.
12

13 TENTH CAUSE OF ACTION

14 (Trade Libel)

15
16 505 Plaintiffs repeat their allegations of all the paragraphs above, and incorporate them
17 as if fully set forth herein.
18

19 506 The facts relating to DOORDAN, LEE and TAKATORI acting for their personal
20 benefit are set out above.

21 507 Defendant ANDERSEN was aware of the nature and extent of the relationships
22 between VEDATECH-JAPAN and QAD-USA and the nature of services provided by
23 VEDATECH-JAPAN to QAD-USA, including the management of OLD-QAD-JAPAN.
24

25 508 ANDERSEN actively conspired with and cooperated with DOORDAN, LEE and
26 others to improperly force the resignation of SUBRAMANIAN from the position and to
27 terminate the agreement between VEDATECH-JAPAN and QAD-USA.
28

1 Libelous statements of ANDERSEN, LEE and DOORDAN

2 509 In their preliminary report prepared on 28th July 1997, ANDERSEN, in conspiracy
3 with DOORDAN and LEE and upon exhortation by DOORDAN and LEE made several
4 libelous statements including, without limitation, the following:
5

- 6 1. Further follow-up indicated that the QAD-Japan president diverted the funds
7 received on this request to pay invoices owed to VEDATECH-JAPAN
8 Corporation.
9
- 10 2. The president of QAD-Japan refused to provide sufficient documentation to
11 support expenditures paid to his VEDATECH-JAPAN company. As a result,
12 we were unable to validate the propriety of approximately 15 VEDATECH-
13 JAPAN invoices (which were previously paid by QAD) selected in our test
14 work.
15
- 16 3. We attempted the following financial test work, but we were unable to complete
17 it because the client (the QAD-Japan president) was unwilling or unable to
18 provide information (resulting in limitation in scope):
19
- 20 4. There was no evidence that reconciliations of the bank cash accounts were
21 performed during the period of examination (1996 and 1997 year-to-date).
22 Given the weakness identified above associated with access to cash,
23 unauthorized withdrawals or disbursements would have gone undetected
24 because of the lack of bank reconciliation.
25
- 26 5. When approached to obtain the documentation from the vendor, the president
27 of QAD-Japan refused to provide the information from his VEDATECH-
28 JAPAN company to properly support the expenditures. ... the president was
unwilling to cooperate with our legitimate request to properly validate invoices
paid to his VEDATECH-JAPAN company.

1 6. Furthermore, given the unusual conflicting relationship between the president's
2 roles with QAD-Japan and Vedatech, sufficient supporting documentation is
3 imperative to avoid adverse appearances.

4
5 7. However, management was either unwilling or unable to provide this
6 information by the completion of our review.

7 510 In September 1997 ANDERSEN, in response to feedback from Plaintiffs regarding
8 the false nature of these statements, reaffirmed their libelous statements by repeating
9 them, including, without limitation as follows:

10 1. I can assure you that the report reflects our professional opinion and was in no
11 way swayed or influenced adversely by management of QAD Inc.

12
13 2. In summary, approximately 80% of the 7/28/97 disbursements was made to
14 Vedatech, contrary to what had been approved at that time by John Doordan
15 and QAD-Corporate.

16
17 3. You did not provide us with all the invoices or sufficient documentation to
18 support these payments.

19 4. Overall, given your relationship with QAD-Japan and Vedatech, it would seem
20 that you could have authorized VEDATECH-JAPAN to provide copies of these
21 invoices and other proper documentation. ... As a possible resolution to this
22 situation, if you would like to provide proper supporting documentation to the
23 15 VEDATECH-JAPAN sample payments, we would be glad to amend the
24 report.

25
26 5. ... the report comment that "QAD-Japan does not provide adequate detail of
27 expenses and supporting documentation with its cash funding requests to
28 QAD-Corporate accounting" is accurate.

1 511 Defendant ANDERSEN's conduct as alleged herein constitutes trade libel and
2 were caused with malice and ill-will towards Plaintiffs.

3 512 Defendant LEE specifically influenced, and worked with and conspired with
4 ANDERSEN in the preparation of the said report and contributed to the creation of the
5 report and the libelous statements detailed above. LEE acted for her personal benefit in
6 doing so as alleged above. LEE is personally responsible for these libelous statements
7 and this cause of action. LEE's actions were undertaken both with the purpose of personal
8 gain and (after the June 1997 trip to Japan) with malice and ill-will towards Plaintiffs.
9

10 513 Defendant DOORDAN specifically influenced, and worked with, and conspired
11 with ANDERSEN in the preparation of the said report and contributed to the creation of
12 the report and the libelous statements detailed above.

13 514 DOORDAN acted for his personal benefit in doing so as alleged above.
14 DOORDAN is personally responsible for these libelous statements and this cause of
15 action. DOORDAN's actions were undertaken with malice and ill will towards Plaintiffs.
16

17 Libelous statements of QAD-USA, NEW-QAD-JAPAN and DOORDAN

18 515 In addition, DOORDAN, NEW-QAD-JAPAN and QAD-USA sent
19 communications to various customers including Matsushita (Panasonic), Daikyo-
20 Webasto, etc., asking them not to send monies to QAD-JAPAN and not to deal with
21 SUBRAMANIAN and VEDATECH, indicating that they were not to be trusted with
22 funds meant for QAD-JAPAN. Some of the statements, without limitation, include
23 statements such as in the case of Daikyo-Webasto, "Do not send the payment due at the
24 end of this month to Qad Japan K.K. Mr Subramanian is not the president of Qad Japan
25 K.K. and cannot be trusted with the monies. You must send it to the account for Qad
26 Japan Inc., which is the true Qad Japan."
27

28 516 Such statements constitute trade libel.

A 2934

1 Libelous statements of TAKATORI, NRI-HKG and NRI-JAPAN

2 517 Upon information and belief, defendant TAKATORI, DOORDAN, NEW-QAD-
 3 JAPAN, NRI-HKG, and NRI-JAPAN, and other Defendants have made statements
 4 disparaging Plaintiffs' business reputation and their business products and/ or services, all
 5 constituting trade libel. The statements of TAKATORI on behalf of himself, NRI-HKG
 6 and NRI-JAPAN include, without limitation, statements made to QAD-USA such as "Mr.
 7 Subramanian is not fit to be President of Qad Japan K.K." etc. All these other defendants
 8 were also aware of the nature and extent of the existing and potential relationships
 9 between VEDATECH-JAPAN and its customers, including QAD-USA.
 10

11 Other libelous statements constituting Trade Libel

12 518 Upon information and belief, defendants QAD-USA, NEW-QAD-JAPAN,
 13 DOORDAN, TAKATORI, NRI-HKG, NRI-JAPAN and other defendants have made
 14 statements disparaging Plaintiffs' business reputation and their business products and
 15 services, all constituting trade libel. Such statements include statements such as
 16 "Vedatech can no longer support you adequately", or "SUBRAMANIAN was fired from
 17 Qad Japan K.K.". All these other defendants were also aware of the nature and extent of
 18 the existing and potential relationships between VEDATECH-JAPAN and its customers
 19 including and other than QAD-USA.
 20

21 Conspiracy regarding Trade Libel

22 519 DOORDAN, LEE, QAD-USA, NEW-QAD-JAPAN, ANDERSEN and one or
 23 more DOES 1-50 conspired in some or all of the actions alleged above and acted in
 24 concert resulting in the damages thereof resulting in Trade Libel. Each and every one of
 25 them is thus responsible individually for the entire liability of all the others.
 26

27 520 DOORDAN, NEW-QAD-JAPAN, TAKATORI, NRI-HKG, and NRI-JAPAN and
 28 one or more DOES 1-50 conspired in some or all of the actions alleged above and acted

1 in concert resulting in the damages thereof resulting in Trade Libel. Each and every one
2 of them is thus responsible individually for the entire liability of all the others.

3 Damages

4
5 521 As a proximate result of Defendants' conduct, Plaintiffs have sustained and
6 continue to sustain actual damages in an amount in excess of the jurisdictional limits of
7 this Court, and to be determined at trial.

8
9 522 The acts and conduct of Defendants were oppressive, fraudulent and malicious.
10 Defendants knew or should have known that their conduct would harm Plaintiffs. Their
11 actions were undertaken for the specific purpose of enriching themselves at Plaintiffs'
12 expense. Plaintiffs therefore seek, and are entitled to recover, punitive and exemplary
13 damages in the amount to be determined at trial.

14 ELEVENTH CAUSE OF ACTION

15 (Disparagement of Goods and Quality)

16
17 523 Plaintiffs repeat the allegations of all of the previous paragraphs and incorporate
18 them as if fully set forth herein.

19
20 524 Defendants ANDERSEN, DOORDAN, and LEE were aware of the nature and
21 extent of the relationships between VEDATECH-JAPAN and QAD-USA and the nature
22 of the services provided by VEDATECH-JAPAN to QAD-USA, including the
23 management of OLD-QAD-JAPAN. ANDERSEN participated in the efforts by
24 DOORDAN, LEE and others to improperly force the resignation of SUBRAMANIAN
25 from the position of Representative Director of OLD-QAD-JAPAN and to terminate the
26 agreement between VEDATECH-JAPAN and QAD-USA.

27 A 2936

1 525 The conduct of Defendants ANDERSEN, DOORDAN and LEE constitute
2 Disparagement of Goods and Quality.

3 526 Upon information and belief, defendant DOORDAN, NEW-QAD-JAPAN,
4 TAKATORI, NRI-HKG, and NRI-JAPAN, and other defendants have made statements
5 disparaging of Goods and Quality as described above. All these other defendants were
6 also aware of the nature and extent of the existing and potential relationships between
7 VEDATECH-JAPAN and its customers, including QAD-USA.
8

9 527 Upon information and belief, defendants DOORDAN, QAD-USA, TAKATORI,
10 NEW-QAD-JAPAN, NRI-HKG, NRI-JAPAN and other Defendants have made
11 statements disparaging Plaintiffs' business reputation and their business products and / or
12 services, all of which constitute disparagement of goods and quality. All these
13 Defendants were also aware of the nature and extent of the existing, and potential
14 relationships between VEDATECH-JAPAN and its customers other than QAD-USA.
15

16 **Conspiracy resulting in Disparagement of Goods and Quality**

17 528 DOORDAN, LEE, ANDERSEN, NEW-QAD-JAPAN, and one or more DOES 1-
18 50 conspired in some or all of the actions alleged above and acted in concert resulting in
19 the damages thereof relating to disparagement of goods and quality. Each and every one
20 of them is thus responsible individually for the entire liability of all the others.

21 529 Defendants DOORDAN, NEW-QAD-JAPAN, TAKATORI, NRI-HKG, and NRI-
22 JAPAN and one or more DOES 1-50 conspired in some or all of the actions alleged above
23 and acted in concert resulting in the damages thereof relating to disparagement of goods
24 and quality. Each and every one of them is thus responsible individually for the entire
25 liability of all the others.
26

27 530 DOORDAN, QAD-USA, NEW-QAD-JAPAN, TAKATORI, NRI-HKG, and NRI-
28 JAPAN and one or more DOES 1-50 conspired in some or all of the actions alleged above

1 and acted in concert resulting in the damages thereof relating to disparagement of goods
 2 and quality. Each and every one of them is thus responsible individually for the entire
 3 liability of all the others.

4 Damages

5
 6 531 As a proximate result of these actions by DOORDAN, LEE, ANDERSEN, QAD-
 7 USA, NEW-QAD-JAPAN, TAKATORI, NRI-HKG, and NRI-JAPAN, Plaintiffs have
 8 sustained and continue to sustain actual damages in an amount in excess of jurisdictional
 9 limits of this Court, and to be determined at trial.

10 532 The acts and conduct of Defendants were oppressive, fraudulent, and malicious.
 11 Defendant knew or should have known that their conduct would harm Plaintiffs. Their
 12 actions were undertaken for the specific purpose of enriching themselves at Plaintiffs'
 13 expense. Plaintiffs therefore seek, and are entitled to recover, punitive and exemplary
 14 damages in the amount to be determined at trial.

15 TWELFTH CAUSE OF ACTION

16 (Conversion)

17
 18
 19 533 Plaintiffs repeat the allegations of all of the previous paragraphs, and incorporate
 20 them as if fully set forth herein.

21
 22 534 Defendant QAD-USA, DOORDAN, NEW-QAD-JAPAN, OLD-QAD-JAPAN and
 23 one or more DOES 1-50 fraudulently converted the share in OLD-QAD-JAPAN owned
 24 by Plaintiff SUBRAMANIAN.

25 Conspiracy to cause conversion

26
 27 535 DOORDAN, LEE, QAD-USA, NEW-QAD-JAPAN, OLD-QAD-JAPAN, and one
 28 or more DOES 1-50 conspired in some or all of the actions alleged above and acted in

1 concert resulting in the damages thereof relating to conversion of the one share that
 2 SUBRAMANIAN held in OLD-QAD-JAPAN. Each and every one of them is thus
 3 responsible individually for the entire liability of all the others.

4 Damages

5
 6 536 As a proximate result of these actions by DOORDAN, LEE, QAD-USA, NEW-
 7 QAD-JAPAN, OLD-QAD-JAPAN, and one or more DOES 1-50, Plaintiffs have
 8 sustained and continue to sustain actual damages in an amount in excess of jurisdictional
 9 limits of this Court, and to be determined at trial.

10 537 The acts and conduct of Defendants were oppressive, fraudulent, and malicious.
 11 Defendant knew or should have known that their conduct would harm Plaintiffs. Their
 12 actions were undertaken for the specific purpose of enriching themselves at Plaintiffs'
 13 expense. Plaintiffs therefore seek, and are entitled to recover, punitive and exemplary
 14 damages in the amount to be determined at trial.

15 THIRTEENTH CAUSE OF ACTION

16 (Breach of Fiduciary Duty)

17
 18
 19 538 Plaintiffs repeat the allegations of all the paragraphs above, and incorporate them
 20 as if fully set forth herein.

21 539 Defendants QAD-USA, DOORDAN and one or more of DOES 1-50 owed a
 22 fiduciary duty to Plaintiff SUBRAMANIAN not to undertake some or all of the actions
 23 described herein.

24
 25 540 The fiduciary duty of QAD-USA towards SUBRAMANIAN is that of a majority
 26 shareholder to a minority shareholder and is set out above.

27 A 2939

1 541 The fiduciary duty of DOORDAN towards SUBRAMANIAN is both that arising
 2 in his position as an agent of QAD-USA and that arising independently towards
 3 SUBRAMANIAN from his role as a co-director/board member of OLD-QAD-JAPAN.

4 542 Both DOORDAN and QAD-USA, in undertaking the actions described herein,
 5 breached their duties towards SUBRAMANIAN.
 6

7 **Conspiracy resulting in breach of fiduciary duty**

8 543 DOORDAN, QAD-USA and one or more DOES 1-50 conspired in some or all of
 9 the actions alleged above and acted in concert resulting in the damages thereof relating to
 10 their breach of fiduciary duties towards SUBRAMANIAN. Each and every one of them
 11 is thus responsible individually for the entire liability of all the others.
 12

13 **Damages**

14 544 As a proximate result of these actions by DOORDAN, QAD-USA and one or more
 15 DOES 1-50, Plaintiffs have sustained and continue to sustain actual damages in an
 16 amount in excess of jurisdictional limits of this Court, and to be determined at trial.
 17

18 545 The acts and conduct of Defendants were oppressive, fraudulent, and malicious.
 19 Defendant knew or should have known that their conduct would harm Plaintiffs. Their
 20 actions were undertaken for the specific purpose of enriching themselves at Plaintiffs'
 21 expense. Plaintiffs therefore seek, and are entitled to recover, punitive and exemplary
 22 damages in the amount to be determined at trial.

23 **FOURTEENTH CAUSE OF ACTION**

24 **(Unfair Competition)**

25 546 Plaintiffs repeat the allegations of all the previous paragraphs and incorporate them
 26 as if fully set forth herein.
 27
 28

1 547 The facts relating to DOORDAN, LEE and TAKATORI acting for their personal
2 benefit are set out above.

3 548 The duties of various parties towards Plaintiffs are also set out above.
4

5 Regarding defendant ANDERSEN

6 549 QAD-USA had engaged KPMG to do most of its auditing and related functions for
7 many years until 1997, including using KPMG to help its subsidiary OLD-QAD-JAPAN.
8 With the arrival of a new management team, Mr. Raney and LEE brought in ANDERSEN
9 to perform some functions that would normally have gone to KPMG.
10

11 550 ANDERSEN, as is well known from public reports from that period was
12 aggressively courting such "consulting" business in addition to the normal business lines,
13 and ANDERSEN's division that was helping QAD-USA starting from or around the first
14 half of 1997 was engaged in one such "growth" business.

15 551 In their enthusiasm in getting additional business from QAD-USA and OLD-
16 QAD-JAPAN and NEW-QAD-JAPAN (and perhaps from other parts of QAD
17 worldwide), both the AA-MANAGER in Los Angeles and CHIBA in its Tokyo office
18 undertook a pattern of activity described by the actions alleged above, including fraud,
19 opening bank accounts in violation of criminal laws of Japan, and other improper or
20 illegal activities, all of which resulted in the loss of a very valuable business relationship
21 that Plaintiffs had with QAD-USA and consequentially business relating to the
22 MFG/PRO product and the customers and business, then current and prospective of
23 VEDATECH-JAPAN.
24

25 552 Plaintiffs seek in addition to damages, disgorgement of the profits that
26 ANDERSEN gained from providing services to QAD-USA, OLD-QAD-JAPAN, and
27 NEW-QAD-JAPAN or other parts of QAD worldwide under the restitutionary principles
28 of unjust enrichment.

1 Regarding defendants DOORDAN, LEE and TAKATORI

2 553 These defendants, for their own personal benefit and enhancement of their position
3 inside their respective organizations and the advancement of their personal financial
4 gains, caused various damages to Plaintiffs as detailed above.

5
6 554 LEE acted to enhance her status within QAD-USA in the pre-IPO period by trying
7 to show that the management under WHATLEY had many problems and sacrificed the
8 reputation of Plaintiffs to show how she had contributed to the cleaning up of such
9 purported and cooked up problems in preparation for the IPO. From information and
10 belief, it is averred that as a direct result of this LEE was promoted within QAD-USA and
11 gained salary increases and increases in stock options and other benefits.

12 555 The specific actions of LEE that constitute unfair competition are those relating to
13 her efforts to damage Plaintiffs in their trade in order to further her own personal goals as
14 specified herein (including fraudulent activities, trade libel, intentional and negligent
15 interference in contractual relations and prospective economic advantage.)

16
17 556 LEE undertook these to gain position and power and consequent financial gains
18 for herself and did realize such profits. These profits are to be disgorged to Plaintiffs as a
19 remedy for LEE's activities giving rise to this cause of action for unfair competition.

20 557 The activities of DOORDAN, the motivation of DOORDAN and the damages
21 caused by DOORDAN are all set out in great detail above. DOORDAN gained status,
22 better stock options, financial gains and a new lease on his management life inside QAD-
23 USA and its affiliates because of his illegal and improper activities in harming Plaintiffs.

24
25 558 Plaintiffs request that any such monetary benefits or other benefits that can be
26 reasonably valued in monetary terms (including gains from stock options etc.) that flowed
27 from the efforts of such individuals (especially DOORDAN and LEE) in harming

1 Plaintiffs be stripped from them under the restitutionary principles of unjust enrichment
2 and be made that of Plaintiffs as a remedy.

3 559 The activities of TAKATORI, the motivation of TAKATORI and the damages
4 caused by TAKATORI are all set out in great detail above. TAKATORI gained status,
5 financial gains and a better resume because of his illegal and improper activities in
6 harming Plaintiffs.

7
8 560 Plaintiffs request that any such monetary benefits or other benefits that can be
9 reasonably valued in monetary terms (including gains from stock options etc.) that flowed
10 from the efforts of such individuals (DOORDAN, LEE, and TAKATORI) in harming
11 Plaintiffs be stripped from them under the restitutionary principles of unjust enrichment
12 and be made that of Plaintiffs as a remedy.

13
14 Regarding defendants QAD-USA, and NEW-QAD-JAPAN

15 561 The actions of these defendants stretching from around October 1997 through the
16 current period (becoming minimal after 1998) have caused complete loss of the
17 MFG/PRO related business for VEDATECH-JAPAN and was a direct result of the
18 actions regarding unlawful interference as alleged elsewhere in this Complaint.

19
20 Regarding defendant QAD-USA

21 562 QAD-USA, by ratifying the activities of DOORDAN, LEE and others, and by
22 constituting illegal stockholders' and directors meetings in order to remove
23 SUBRAMANIAN, withholding payments to Plaintiffs and preventing customers from
24 properly paying OLD-QAD-JAPAN so that Plaintiffs will be starved of funds, directly
25 and in conspiracy with NEW-QAD-JAPAN acting to commit fraud on their own
26 customers in order to prevent business from going to VEDATECH-JAPAN, and actively
27 encouraging customers not to deal with VEDATECH-JAPAN (through libelous and false
28

1 statements), engaged in a pattern of activity proscribed by the Unfair Competition laws of
2 California.

3 563 QAD-USA through its improper activities detailed herein, avoided having to honor
4 its commitments to Plaintiffs, including having to pay for the past and committed future
5 services of SUBRAMANIAN and VEDATECH-JAPAN (such as the contracts for the
6 localization etc.) and instead routed that to its own subsidiaries (such as QAD Australia
7 for the localization work). QAD-USA also gained in other ways including investments
8 from the NRI group (in the pre-IPO road shows) in return for a commitment to illegally
9 terminate relations with Plaintiffs.
10

11 564 Plaintiffs seek to identify all such profits of QAD-USA (including the pre-IPO
12 investments by the NRI group) gained improperly through its engagement in activities
13 proscribed by the Unfair Competition statutes and disgorge such profits to Plaintiffs.
14

15 Regarding defendant NEW-QAD-JAPAN

16 565 Furthermore, NEW-QAD-JAPAN (mostly through DOORDAN and under his
17 command) acted in violation of the Unfair Competition statutes in robbing OLD-QAD-
18 JAPAN of its business and in gaining business by harming Plaintiffs.

19 566 Plaintiffs seek to disgorge all the profits of NEW-QAD-JAPAN as it was
20 specifically set up to harm Plaintiffs through these unfairly competitive activities.
21

22 567 To the extent that QAD-USA manipulated the accounts of NEW-QAD-JAPAN or
23 artificially reduced its profits, Plaintiffs seek to identify the true profits of NEW-QAD-
24 JAPAN and disgorge those (from QAD-USA or otherwise) for the benefit of and as a
25 remedy for the injuries suffered by Plaintiffs.
26

27 A 2944

1 568 Plaintiffs seek to disgorge any and all profits attributable to such defendants,
2 including the service business that they directly started doing with such customers in
3 different instances, under the principles of unjust enrichment for the benefit of Plaintiffs..

4 Regarding defendants TAKATORI, NRI-HKG and NRI-JAPAN

5
6 569 Defendants TAKATORI, NRI-HKG and NRI-JAPAN initiated a pattern of
7 activity starting in or around late 1996 (through mainly the activities of their executive
8 and agent, TAKATORI) that went over and beyond the normal privileges of a competitor
9 in trying to take the business that VEDATECH-JAPAN had developed through its
10 partnership with QAD-USA.

11 570 These activities culminated in TAKATORI, NRI-HKG and NRI-JAPAN
12 participating in a conspiracy with DOORDAN, by generating letters calling into doubt the
13 integrity or professionalism of VEDATECH-JAPAN or its principal SUBRAMANIAN
14 with the focus no longer being on competition but the destruction of the relationship
15 between Plaintiffs and QAD-USA through unlawful and improper means.

16
17 571 These Defendants, furthermore, acted to take away the MFG/PRO implementation
18 business painfully built up by Plaintiffs in Japan, all to the benefit of NRI-JAPAN and
19 NRI-HKG (and to the benefit of TAKATORI).

20 572 As a direct result of these activities taken in whole, VEDATECH-JAPAN, as
21 alleged above, lost current and prospective business with its customers regarding the
22 MFG/PRO product and lost its business with QAD-USA.

23
24 573 Plaintiffs pray both for damages and for specific injunctions preventing
25 TAKATORI, NRI-HKG and NRI-JAPAN continuing to benefit from such improperly
26 obtained benefits and/ or in the alternative for restitution under the principles of unjust
27 enrichment and order such parties to disgorge any and all profits so gained.

1 574 Specifically it is prayed for that TAKATORI disgorge all profits he gained from or
 2 through a higher position or a better job by virtue of his "success" in quickly establishing
 3 the Japanese business of MFG/PRO for NRI-JAPAN.

4 575 Plaintiffs seek to have NRI-HKG disgorge all profits that it gained from promoting
 5 MFG/PRO to Japanese customers that it handles in its region (for example companies
 6 such as Panasonic in China) and which flowed as a result of taking away VEDATECH-
 7 JAPAN's business with MFG/PRO.

8
 9 576 Plaintiffs also seek to have NRI-JAPAN disgorge all the profits it made from
 10 improperly acquiring both the existing and potential customers of VEDATECH-JAPAN
 11 in the implementation and software support and related businesses surrounding the
 12 support of MFG/PRO in Japan.

13 Damages

14
 15 577 As a proximate result of these actions by defendants, Plaintiffs have sustained and
 16 continue to sustain actual damages in an amount in excess of jurisdictional limits of this
 17 Court, and to be determined at trial.

18 PRAYER

19
 20
 21 WHEREFORE, Plaintiffs pray judgment against Defendants as follows:

- 22
 23
 24 (1) for consequential and economic losses in an amount to be proven at trial;
 25 (2) for interest on such amounts;
 26 (3) for general damages to compensate Plaintiffs for their lost business reputation,
 27 goodwill, and other losses in an amount to be proven at trial;
 28 (4) for punitive damages;

- 1 (5) for attorney's fees;
- 2 (6) for costs of suit;
- 3 (7) for equitable relief stripping defendants of their unjust enrichment and quantum
- 4 merit, as is appropriate; and
- 5 (8) for such and any other relief as the Court deems proper.
- 6
- 7

8
9
10 DATED: December 26, 2001

ROBINSON & WOOD, INC.

11
12
13 By:  for

14 CHRISTOPHER K. KARIC

15 Attorneys for Plaintiffs

16 VEDATECH-JAPAN K.K. and MANI SUBRAMANIAN
17
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VERIFICATION

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)

I, the undersigned, certify and declare that I have read the foregoing PLAINTIFFS' VERIFIED THIRD AMENDED COMPLAINT and know its contents. The statement following the box checked is applicable.

☒ I am a party to this action. The matters stated in the document(s) described above are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

☐ I am ☐ an officer ☐ a partner ☐ a _____ of _____ a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the document(s) described above are true.

☐ I am the attorney, or one of the attorneys for _____, a party to this action. Such party is absent from the county where I or such attorneys have their offices and is unable to verify the document described above. For that reason, I am making this verification for and on behalf of that party. I am informed and believe that on that ground allege that the matters stated in said document(s) are true.

Executed on 26th December, 2001, at LONDON, United Kingdom

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

A. Subramanian

Name: Mani S. Subramanian

Title: (Individual Plaintiff)

VERIFICATION

STATE OF CALIFORNIA)
COUNTY OF SANTA CLARA)

I, the undersigned, certify and declare that I have read the foregoing PLAINTIFFS' VERIFIED THIRD AMENDED COMPLAINT and know its contents. The statement following the box checked is applicable.

☐ I am a party to this action. The matters stated in the document(s) described above are true of my own knowledge and belief except as to those matters stated on information and belief, and as to those matters I believe them to be true.

☒ I am ☒ an officer ☐ a partner ☐ a _____ of VEDATECH K.K. a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in the document(s) described above are true.

☐ I am the attorney, or one of the attorneys for _____, a party to this action. Such party is absent from the county where I or such attorneys have their offices and is unable to verify the document described above. For that reason, I am making this verification for and on behalf of that party. I am informed and believe that on that ground allege that the matters stated in said document(s) are true.

Executed on 26th December, 2001, at LONDON, United Kingdom.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


for VEDATECH K.K. as its officer

Name: Mani S. Subramanian

Title: Representative Director

PROOF OF SERVICE

Short Title: VEDATECH v. QAD (CV 784685)
Short Title: QAD, INC. v. SUBRAMANIAN (CV 771638)

I, MARYKNOL R. LOPEZ, declare:

I am a citizen of the United States and a resident of the County of Santa Clara. I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by Robinson & Wood, Inc., 227 North First Street, San Jose, California, 95113, in the office of a member of the bar of this court at whose direction the service was made. I am readily familiar with Robinson & Wood, Inc.'s practice for collection and processing of documents for delivery by way of the service indicated below:

- (X) [BY MAIL] By consigning such copy in a sealed envelope, First Class postage fully prepaid, in the United States Postal Service for collection and mailing
- () [BY OVERNIGHT DELIVERY] By consigning such copy in a sealed envelope to an overnight courier for next business day delivery
- () [BY HAND-DELIVERY] By consigning such copy in a sealed envelope to a messenger for guaranteed hand-delivery
- () [BY FACSIMILE TRANSMISSION] By consigning such copy to a facsimile operator for transmittal

On December 26, 2001, in accordance with ordinary business practices at Robinson & Wood, Inc., I caused to be served **VERIFIED THIRD AMENDED COMPLAINT OF PLAINTIFFS** in the manner identified above on the person(s) listed below:

William D. Connell, Esq.
General Counsel Associates LLP
1891 Landings Drive
Mountain View, CA 94043

Attorneys for Defendant
QAD, Inc., QAD Japan and Lai Foon Lee
650/428-3900; 650/428-3901-fax

Frederick S. Fields, Esq.
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222 Kearny Street, 7th Floor
San Francisco, CA 94108-4510

Attorneys for Defendant
Arthur Andersen LLP
415/391-4800; 415/989-1663-fax

J. David Black, Esq.
John Arai Mitchell, Esq.
White & Case LLP
3000 El Camino Real
Five Palo Alto Square, 10th Floor
Palo Alto, CA 94306

A 2950

1 Maureen McFadden, Esq.
2 GREENAN, PEPPER, et al.
3 Two Annabel Lane, Suite 200
San Ramon, CA 94583

4 I declare under penalty of perjury that the foregoing is true and correct.

5 Executed on December 26, 2001, at San Jose, California.

6 
7
8 MARYKNOL R. LOPEZ

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EXHIBIT B -
QAD Request for Judicial Notice

CHRISTINA GONZAGA (CSBN # 221187)
LAW OFFICES OF JAMES S. KNOFF
1840 Gateway Drive, Suite 200
San Mateo, CA 94404
Telephone: (650) 627-9595
Facsimile: (888) 715-9583

Attorney for Plaintiffs
VEDATECH K.K. and VEDATECH INC.

MANI SUBRAMANIAN (PRO PER)
c/o LAW OFFICES OF JAMES S. KNOFF
1840 Gateway Drive, Suite 200, San Mateo, CA 94404
Telephone: (650) 627-9595
Facsimile: (888) 715-9583

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(San Francisco Division)

VEDATECH INC., a Washington State
Corporation, *and* VEDATECH K.K., a
Japanese Corporation, *and* MANI
SUBRAMANIAN, an Individual;

Plaintiffs,
vs.

ST. PAUL FIRE & MARINE
INSURANCE COMPANY,
a Minnesota Corporation, *and*
UNITED STATES FIDELITY AND
GUARANTY COMPANY,
a Maryland Corporation; *and*
QAD INC., a Delaware Corporation; *and*
QAD Japan K.K., a Japanese Corporation;
and
RANDALL WULFF, an individual;
and DOES 1-50;

Defendants.

Case No.: **C-04-01249 VRW**

FIRST AMENDED COMPLAINT
of Plaintiffs

VEDATECH INC., VEDATECH K.K. and
MANI SUBRAMANIAN for

1. DECLARATORY JUDGMENT;
 2. PERMANENT INJUNCTION;
 3. FRAUD / MISREPRESENTATION;
CONSPIRACY TO COMMIT FRAUD;
 4. CONSTRUCTIVE FRAUD;
CONSPIRACY TO COMMIT FRAUD;
 5. NEGLIGENT
MISREPRESENTATION;
 6. INSURANCE BAD FAITH (BREACH
OF COVENANT OF GOOD FAITH
AND FAIR DEALING)
 7. UNFAIR COMPETITION;
- and

DEMAND FOR JURY TRIAL

1 Plaintiffs VEDATECH INC., VEDATECH, K.K., and MANI SUBRAMANIAN
2 allege as follows:

3 **JURISDICTION**

4 1. This court has jurisdiction under 28 USC §1332 (a)(3) (“citizens of different
5 States and in which citizens or subjects of a foreign state are additional parties” – please see
6 the section titled “THE PARTIES” in the next page.)

7 2. The amount in controversy exceeds US\$ 75,000.

8 **VENUE AND INTRADISTRICT ASSIGNMENT (SAN FRANCISCO)**

9 3. Venue is proper in the Northern District of California as required under the
10 provisions of 28 USC § 1391 and according to the Northern District’s Civil L-R 3-2.

11 4. Defendant St.Paul Fire and Marine Insurance Co. is a resident of, and
12 maintains offices (its Regional Claims office) in, San Francisco County at 100 California
13 Street, Suite 300, San Francisco, California 94111.

14 5. Defendant United States Fidelity and Guaranty Co., a wholly owned and
15 controlled subsidiary of defendant St.Paul Fire and Marine Insurance Co., is a resident of,
16 and maintains offices in San Francisco County at One Market Plaza, Ste., 2075 San
17 Francisco, CA 94105.

18 6. Defendants QAD Inc. and QAD Japan K.K. are subject to personal
19 jurisdiction in the County of San Francisco.

20 7. Randall Wulff, a key player in the events relevant herein is a resident of
21 Piedmont, California in Alameda County.

22 8. A substantial part of the events that give rise to the Claims occurred in
23 Alameda County, California. In addition, most or all of the negotiations regarding the
24 “agreement” attached as Exhibit-A and the subject matter of this complaint, were undertaken
25 by Mr. Tancredy of St.Paul from its Oakland offices in Alameda County.

THE PARTIES

[Plaintiff] SUBRAMANIAN

9. Individual Plaintiff Mani Subramanian (“SUBRAMANIAN”) is a United States Citizen and is a resident of and domiciled in Seattle, Washington.

[Plaintiff] VEDATECH INC.

10. Plaintiff Vedatech Inc., (“VEDATECH-USA”) is a Washington State corporation with principal place of business in Seattle, Washington.

[Plaintiff] VEDATECH K.K.

11. Plaintiff Vedatech K.K., (“VEDATECH-JAPAN”), is a corporation organized under the laws of Japan with its principal place of business in Yokohama, Japan.

[Defendant] ST.PAUL FIRE & MARINE INSURANCE CO.

12. Defendant St.Paul Fire & Marine Insurance Co., (“ST.PAUL”) is a Minnesota corporation with principal place of business in Minneapolis (Saint Paul), Minnesota.

[Defendant] UNITED STATES FIDELITY & GUARANTY CO.

13. Defendant Unites States Fidelity and Guaranty Co. (USF&G) is a Maryland Corporation with its principal place of business in Baltimore, Maryland.

[Defendant] QAD INC.

14. Defendant QAD Inc. (“QAD”), is a Delaware corporation, with its principal place of business in Carpinteria, California. QAD is an alter ego of each and every one of its subsidiaries including QAD Japan K.K., a defendant in this action, and QAD Japan Inc., a Delaware corporation founded solely to strip QAD Japan K.K. of its assets and value.

[Defendant] QAD JAPAN K.K.

15. Defendant QAD Japan K.K..(“QAD-JAPAN”) is a Japanese corporation which used to have its principal place of business in Yokohama, Japan. In or around August

1 1997, QAD Inc. set up a parallel Delaware corporation called QAD Japan Inc., solely for the
2 purpose of usurping all of the business, customers, and capital value of QAD Japan K.K.,
3 reducing the value of Plaintiff Subramanian's share of the issued stock of QAD Japan K.K.
4 to a minimum or nothing, and rendering QAD Japan K.K. a defunct company. This much,
5 QAD Inc. has achieved with great success. In addition, QAD Inc. improperly concealed the
6 existence of QAD Japan Inc., the new company from the public in its SEC offerings. QAD
7 Inc. went public in August of 1997. The 10-K registrations of QAD Inc., (NASDAQ:
8 QADI), filed on April 29, 1998, lists only QAD Japan K.K. as a subsidiary of QAD Inc. The
9 April 28, 2000 filing of QAD Inc. with the SEC lists both QAD Japan K.K. and the new
10 company QAD Japan Inc. as subsidiaries. Since then, the April 27, 2001, April 30, 2002,
11 April 30, 2003, and April 15, 2004 10-K registrations with the SEC only show QAD Japan
12 Inc., the new company as a subsidiary of QAD Japan K.K. QAD Japan K.K. as such does
13 not have a separate existence apart from QAD Inc., and to the extent it does, it is an "alter
14 ego" of QAD Inc. To hold otherwise would cause great injustice to Plaintiffs.

15 16. Valerie Miller ("MILLER") is an individual residing in or near Santa Barbara,
16 California. MILLER serves as Vice President and Corporate Controller of QAD Inc.
17 MILLER works at the offices of QAD Inc. in or near Carpinteria, California. MILLER also
18 signs official documents as an officer of QAD Japan K.K. For example, MILLER signed the
19 "Settlement Agreement" that is at issue in this case and attached herewith as Exhibit A. The
20 exact liability of MILLER, if any, with respect to these events is not known at this time. If
21 such liability becomes known, Plaintiffs will join MILLER to the action at the right time.

22 **RANDALL WULFF**

23 17. Randall Wulff ("WULFF") is an individual residing in Piedmont (Oakland),
24 in Alameda County, California. WULFF conducts business as a "mediator" and works out
25 of offices in Oakland, Alameda County, California.

1 **DOE DEFENDANTS**

2 18. The identity of the DOE defendants 1-50 are unknown or not determinable
3 with certainty at this point in time. Plaintiffs wish to amend the Complaint later as necessary
4 as such defendants are identified. From information and belief, such DOE defendants are
5 responsible for some or all of the causes of action set out herein. The term Defendants or
6 DEFENDANTS shall refer to the named defendants and the DOE defendants collectively.

8 **NOMENCLATURE**

9 19. Defendants ST.PAUL and USFG shall be referred to individually and jointly
10 as “ST.PAUL” with distinctions made between the two if and when necessary.

11 20. Defendants QAD and QAD-JAPAN shall be referred to individually and
12 jointly as “QAD” with distinctions made between the two if and when necessary.

13 21. Defendants VEDATECH-USA and VEDATECH-JAPAN shall be referred to
14 individually and jointly as “VEDATECH” with distinctions made between the two if and
15 when necessary.

16 22. VEDATECH and defendants SUBRAMANIAN shall be collectively referred
17 to as the “VEDATECH PARTIES” or “Vedatech Parties”.

19 **PRELIMINARY NOTE**

20 23. Since the filing of the original Complaint, Plaintiffs have come across a web
21 article attached as Exhibit B to this Complaint, which provides support for Plaintiffs’ claims
22 herein. This article appeared in the website of an insurance research organization in Dallas in
23 March 2004. The issues that are in dispute in this instant case raise difficult issues of
24 developing areas of law. It is Plaintiffs’ contention that carriers such as St.Paul are abusing
25 the process of mediation to engage in pre-meditated acts of bad faith under the cloak of
26 confidentiality provided by such mediation. These practices need to be stopped.

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28 **First Amended Complaint of**
 Plaintiffs Vedatech Inc., Vedatech K.K. and Mani Subramanian against defendants
 St.Paul Fire and Marine Insurance, USF&G, QAD Inc., QAD Japan K.K. and Randall Wulff

FACTUAL BACKGROUND ¹

The QAD-Case

24. Litigation in California was initiated by QAD against VEDATECH-USA and SUBRAMANIAN in January 1998. This followed several months of efforts by various parties affiliated with QAD, and eventually QAD itself, to improperly terminate QAD's contractual obligations to Vedatech Parties. This case, originally filed in State Court in San Jose as CV 771638 is now pending in this district as C-04-01806. This case, C-04-01806, shall be referred to herein as the "QAD-Case". ²

25. The Complaint in the QAD Case, apart for some non-controversial background information, is a long list of fabrications. This was a naked attempt by QAD to put financial pressure on Vedatech Parties and thus force them to abandon their claims which might have been brought more economically in Japan. An accurate description of the background events is set out in great detail in the Third Amended Complaint of VEDATECH-JAPAN in the companion case, currently available as Tab-90 of Exhibit B to the Notice of Removal (Docket #1) in C-04-01806.

¹ ST. PAUL has objected to the original Complaint on the basis that the Complaint did not have enough details (mostly referring to the State procedural rules for pleadings). Conversely, QAD has objected to the same Complaint on the basis that the Complaint had too many details. QAD has suggested that the Complaint be dismissed under FRCP 41(b) for not being concise enough. This First Amended Complaint attempts to comply with the heightened requirements for pleading Fraud under FRCP 9(b). The amount of detail is provided in the hope of discouraging QAD and St. Paul from filing further meritless 12(b)(6) motions claiming a failure to state a claim.

² VEDATECH-JAPAN intervened in the QAD-Case by means of a second action, CV 784685 that has been consolidated into CV 771638 for all purposes. Thus, there is only one consolidated case extant. This was last removed to Federal Court as C-04-01806. QAD has filed a motion to remand and a hearing is currently set for July 7, 2004.

Involvement of insurers, ST.PAUL

26. In January 1999, Vedatech Parties tendered defense of the QAD-Case to ST.PAUL. Rather than provide a proper defense to the in the QAD-Case, insurers ST.PAUL engaged in a whole series of insurance bad faith acts against Vedatech Parties, weakening their position vis-à-vis QAD considerably.

Crisis time in the QAD Litigation

27. In February 2002, independent attorneys hired directly by Vedatech Parties to defend the QAD-Case gave notice that they will quit for non-reimbursement (and non-likelihood of future reimbursements) of various attorney's fees from ST.PAUL.

The ST.PAUL-Case

28. If February 2002, ST.PAUL, in an attempt to escape their contractual obligations and to take advantage of the developing situation where it seemed that Vedatech Parties would be left without legal help, purported to rescind their insurance obligations by initiating a Declaratory Action in State Court in San Jose as CV 805197.

29. A full account of the bad faith actions of St.Paul in leading up to their Declaratory Action is described in the Fourth Amended Cross-Complaint of Vedatech Parties (who are defendants therein) as Tab-37, Docket #5, Exhibits (Parts 9-10) to the Notice of Removal, in C-04-01818. C-04-01818 shall be referred to herein as the ST.PAUL-Case. ³

ST.PAUL's acts of insurance bad faith continued even after the filing of the counterclaims (cross-complaint) by Vedatech Parties in June 2002

30. In spite of the fact that Vedatech Parties filed their counterclaims in June 2002 in the ST.PAUL-Case, and detailed their grievances therein, ST.PAUL continued to deny proper defense benefits, did not appoint any defense counsel for the QAD Case, and

³ The ST.PAUL-Case, CV 805197 was also removed recently to this district as C-04-01403, and on additional evidence as C-04-01818. ST.PAUL has filed motions to remand.

1 provided sporadic, late, and partial reimbursements for some of the fees incurred by
2 Vedatech Parties' independent counsel. In addition, ST.PAUL intentionally and falsely
3 portrays its bad faith efforts in public documents (such as in filings in this case) as if it is or
4 was providing a full defense in the QAD Case.

5 **SUBRAMANIAN forced to appear *pro se***

6 31. Since June 2002, Vedatech Parties have been struggling to maintain their
7 defense of both the QAD-Case and the ST.PAUL-Case. As a result of the poor
8 reimbursement policies of ST.PAUL, SUBRAMANIAN has been forced to appear *pro se*.
9 This has played into QAD's strategy of stonewalling and denying proper discovery.⁴

10 **ST.PAUL's request for a status report**

11 32. In November 2003, in response to a request from ST.PAUL for a
12 recommendation with respect to ADR / Mediation, Vedatech Parties suggested mediation
13 with a view to a Global settlement, and floated two names Randall Wulff (WULFF) and Jack
14 Williams as mediators that they had heard about. Vedatech Parties at that point in time were
15 not aware of the prior relationship between ST.PAUL and WULFF. ST.PAUL did not
16 respond substantively to this report. In fact, ST.PAUL, in spite of their duties to disclose the
17 conflict they had with WULFF, failed to disclose their prior contacts with WULFF.

18 **The January 13, 2004 hearing**

19 33. On January 13, 2004, ST.PAUL lost its last attempt to dismiss Vedatech
20 Parties' counterclaims in the ST.PAUL-Case. Before the hearing, ST.PAUL, without
21 informing Vedatech Parties and outside their presence, discussed the matter of mediation

22 ⁴ QAD refuses to provide even a copy of their CGL policies that might
23 cover Vedatech's (counter-)claims against them in the QAD-Case. In
24 addition, email archives have been withheld entirely by QAD, who are
25 plaintiffs in a case they themselves chose to bring in California, on the
26 basis that it is "oppressive", etc., etc. ST.PAUL's lack of proper
27 defense support has assisted QAD in getting away with this for this long.

1 with QAD. ST.PAUL then requested the Judge to “order” mediation *specifically* before
2 WULFF. ST.PAUL did not disclose to the Vedatech Parties or to the Court, the detailed
3 nature of its prior relationship with WULFF either before or after this hearing.

4 **Pre-meditated plan of ST.PAUL regarding the mediation**

5 34. In addition, ST.PAUL had before the time of this January 13, 2004 hearing,
6 already formulated a strategy for using the secrecy of mediation as a cover for engaging in
7 collusive and bad faith negotiations with QAD, and specifically with the help of WULFF, in
8 order to weaken the legal representation of Vedatech Parties and enhance their own position
9 in the insurance coverage litigation.

10 35. Prior to the January 13, 2004 hearing, QAD had not made any open settlement
11 offers to ST.PAUL. Neither had ST.PAUL requested QAD (or the Vedatech Parties) to
12 make an offer. ST.PAUL itself had not made any offers to QAD. ST.PAUL knew that any
13 efforts by them to have open settlement discussions with QAD and conduct discussions
14 would be subject to approval of the Vedatech Parties. ST.PAUL knew fully well that they
15 had to give Vedatech Parties an opportunity to choose to undertake their own defense. But
16 this would defeat ST.PAUL’s goal of freely being able to pursue their coverage litigation.
17 Thus, ST.PAUL concocted this plan to arrange a mediation with the specific intent of
18 engaging in bad faith tactics which they otherwise would not be able to engage in.

19 **Prior business dealings between WULFF and ST.PAUL**

20 36. ST.PAUL and its attorneys had conducted prior business with WULFF
21 wherein both ST.PAUL and WULFF knew of the advantages of using the cloak of secrecy
22 provided by the mediation in order to strike deals with the plaintiffs in the underlying cases
23 (such as the QAD-Case) to the detriment of the insureds. ST.PAUL and Mr. Greenan did not
24 disclose the details of ST.PAUL’s and/or his firm’s prior dealings with WULFF. Instead,
25 before the January 13, 2004 order was made, ST.PAUL made brief general statements of
26 confidence in the ability of WULFF that failed to describe the close relationship and
27 understanding they had with WULFF regarding the conduct of insurance mediations.

Vedatech Parties tricked into “consenting” to mediation before WULFF

37. Vedatech Parties were unaware of the nature and extent of ST.PAUL’s prior relationship with WULFF, and unaware of ST.PAUL’s plans on using the mediation as a mechanism to safely (for ST.PAUL) engage in bad faith activities. Accordingly, Vedatech Parties did not object to a mediation at the January 13, 2004 hearing. Vedatech Parties made a reasonable assumption that it would be useful to mediate with QAD, and that ST.PAUL would not, for the purpose of the mediation, mix-up the coverage issues with the underlying liability issues in the QAD litigation. Had Vedatech Parties been aware either of

- (a) the conflict that WULFF had because of a close working relationship with ST.PAUL and/or Mr Greenan on similar insurance related mediation; *or*
 - (b) the detailed nature of the prior relationship between ST.PAUL and WULFF; *or*
 - (c) the detailed nature of the prior relationship between Mr Greenan and his firm with WULFF and the types of mediation they had conducted before; *or*
 - (d) ST.PAUL’s premeditated plans regarding the improper use of the mediation, *or*
 - (e) ST.PAUL’s premeditated plans of using the attorneys litigating the coverage issues (Mr Greenan, Mr Wang, et. al.) to “negotiate” with QAD and participate in the settlement of the QAD-Case,
- they would not even have provisionally consented to this “Order”, or the mediation.

38. In any event, as decided on January 13, 2004, the mediation was contingent and conditional upon the consent and stipulation of all the parties. For example, Arthur Andersen LLP (not a party to this case) did not consent to the proposed mediation, but the order that was prepared by ST.PAUL did not incorporate this condition.

ST.PAUL handles mediation issues through the coverage attorneys

39. ST.PAUL moved quickly to arrange mediation. This was done through its attorneys, Mr Greenan and Mr Wang, the same attorneys who were handling the coverage issues (i.e., prosecuting the Declaratory Relief action and defending Vedatech’s bad faith action /counterclaims). The mediation was thus tainted from the beginning.

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ST.PAUL's desperate attempts to force the mediation to happen

40. ST.PAUL and WULFF tentatively set the mediation for March 3, 2004. In early February 2004, SUBRAMANIAN had to attend to a family emergency. This prevented him from attending on March 3, 2004, a date selected by ST.PAUL. In response, ST.PAUL filed an *ex parte* motion in the State Court. ST.PAUL obtained an order forcing SUBRAMANIAN to personally appear for the mediation on the March 3, 2004 date or face "contempt of Court".⁵ One of the grounds for such a request was the convenience of WULFF and his non-availability until May 2003. ST.PAUL would not consider anyone except WULFF as a mediator. This was not the first time that ST.PAUL would get an erroneous order signed at the hearing itself. Due to ST.PAUL's practices of this nature, the State Court changed its policy with respect to this case, and began writing out its own orders.

Attempts by WULFF to "make it happen"

41. Initially WULFF did not respond to calls from SUBRAMANIAN and his requests to change the mediation date. The assistant to WULFF informed SUBRAMANIAN that he and WULFF only dealt with attorneys and not with *pro se* parties. SUBRAMANIAN intensified his efforts to alert all parties concerned about the difficulties he had in attending the March 3, 2004 date. Subsequently, WULFF called SUBRAMANIAN and offered to reschedule the mediation date for March 12, 2004. WULFF did this as a favor to ST.PAUL (in order to ensure that ST.PAUL had the forum to engage in their pre-planned collusive activities with QAD and bad faith tactics to threat SUBRAMANIAN).

⁵ ST.PAUL repeated this kind of extreme behaviour when it gave notice of an *ex parte* hearing for March 15, 2004 ostensibly for resolution of its discovery dispute asking VEDATECH to produce all the discovery documents disclosed by QAD in the underlying litigation. When SUBRAMANIAN appeared for the hearing, Mr. Wang, an attorney for ST.PAUL, seconds before entering the chambers gave SUBRAMANIAN papers in support of a "contempt citation". Of course, the Court did not issue any such contempt citation.

WULFF and the “Confidentiality Agreement”

42. In the way of preparation for mediation, on or around February 3, 2004, Michael Richards, assistant to WULFF sent copies of a fee schedules and a “CONFIDENTIALITY AGREEMENT”. This document purported to be a proposed agreement between the various parties to the mediation and WULFF, the mediator.

Vedatech Parties decline offer regarding multilateral agreements

43. SUBRAMANIAN refused to sign any further agreements with the parties just for the sake of engaging in the mediation process, especially given the multiplicity of disputes already ongoing between the parties. SUBRAMANIAN was willing to consider a separate limited bilateral agreement with the mediator as necessary and appropriate.

Conference Call conducted by WULFF

44. The issue of the lack of consent of Arthur Andersen to the January 13, 2004 “consent” order came before the State Court again in February 2004. This resulted in the State Court deciding that the mediator should set the terms of the mediation. In a telephone conference call organized by WULFF in response to this, SUBRAMANIAN made clear the objection of Vedatech Parties to signing the Confidentiality Agreement or any sort of agreement with the parties. Mr Greenan, attorney for ST.PAUL (in the coverage action) was also participating in the conference call. He immediately said that this would be a “problem”. ST.PAUL and Mr Greenan did not disclose to Vedatech Parties the real reason why this was a “problem”. ST.PAUL and Mr Greenan then proceeded to put pressure on SUBRAMANIAN to sign the CONFIDENTIALITY AGREEMENT. ST.PAUL and Mr Greenan insisted on extended agreements on confidentiality with respect to the mediation.

WULFF requests a Court Order

45. WULFF, at this conference call decided that the arrangements discussed at the conference call should be turned into an Order of the State Court. Arthur Andersen prepared a draft that was found unacceptable by Vedatech Parties. ST.PAUL put pressure on Arthur Andersen to submit that draft urgently to the State Court.

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Further desperate and extreme measures adopted by ST.PAUL

46. SUBRAMANIAN and VEDATECH had rejected this proposed Order prepared by Andersen. ST.PAUL and QAD, yet again without notice and at a hearing on a different matter, persuaded the State Court Judge to sign the order setting various details of the mediation, including portions of a contract originally offered by the mediator and which SUBRAMANIAN had rejected. The State Court Judge signed this coercive order on the basis that the January 13, 2004 order was by “consent”. The “consent” of Vedatech Parties to the January 13, 2004 was obtained through fraudulent non-disclosure by ST.PAUL.

SUBRAMANIAN forced to attend the March 12, 2004 mediation

47. The net effect of all of this was that SUBRAMANIAN, although not desirous of participating in any mediation under these coercive conditions, was under a Court order (obtained fraudulently by ST.PAUL) to participate in the mediation on March 12, 2004. This mediation had been carefully stage-managed by ST.PAUL, and WULFF.

The proposed agreement with WULFF

48. A few days before the mediation, SUBRAMANIAN reviewed the draft proposed agreement sent by the mediator, the original “CONFIDENTIALITY AGREEMENT”. Upon inquiry with Michael Richards, the assistant to the mediator, Mr Richards informed SUBRAMANIAN’s attorneys that the reference to “Confidentiality” in this agreement was to the agreement itself, and that the reference to “Conflicts Check” simply meant that a conflicts check had been completed and that there was no conflict. No reference to the “Mediation Procedures” was made and no such document was received. WULFF’s assistant, Mr. Richards did not mention any conflict with ST.PAUL, nor did he provide any information at all about the past relationship WULFF had with ST.PAUL or Mr. Greenan or his law firm. On this basis that WULFF had performed a conflicts check and there was no known conflict with the participants, SUBRAMANIAN proposed a draft revised bilateral agreement and sent that proposal by email to WULFF and Mr Richards. No response was received until the day of the mediation.

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EVENTS BEFORE THE MEDIATION STARTED

49. In light of the uncertainty over the admissibility of evidence of events at the actual mediation itself, Plaintiffs will only detail events before the official start of the mediation (around 11:00 AM) and after the end of the mediation (around 4:00 PM). Further details will be provided if necessary and as the Court permits.⁶

Coercion and Duress before the commencement of the Mediation

50. On the morning of March 12, 2004 the parties assembled BEFORE the start of the mediation for a discussion of contractual formalities etc. SUBRAMANIAN objected to the participation by the coverage attorneys for ST.PAUL (Mr. James Greenan and Mr. Enoch Wang). This was due to the conflict of interest arising from the coverage issues and the declaratory relief action, wherein ST.PAUL was trying to defeat coverage by taking positions that essentially put them in the same camp as QAD. As a means to avoiding this conflict, SUBRAMANIAN further suggested that the insurance adjuster (Mr Joseph Tancredy) was the appropriate person to participate in the negotiations with QAD.⁷ ST.PAUL flatly rejected these offers. Mr Tancredy insisted that Mr Greenan be in charge.

SUBRAMANIAN attempted to leave before the mediation started

51. SUBRAMANIAN then informed WULFF, that he did not want to start the mediation under these conditions. SUBRAMANIAN expressed his decision to leave before the mediation started. After strong pressure and further promises from WULFF detailed

⁶ This clarification is provided to avoid unnecessary objections by QAD or ST.PAUL regarding the pleading of confidential matters.

⁷ VEDATECH's motion in State Court in late 2003 to have the insurance coverage litigation stayed pending the resolution of the QAD case was denied. Because of the financial troubles caused by the lack of proper funding from ST.PAUL, no writ application has been filed yet although Vedatech Parties wish to make such an appeal.

herein, SUBRAMANIAN agreed to stay back for limited purposes only. One of the conditions for SUBRAMANIAN's continued participation was that SUBRAMANIAN should first be able to attempt mediation with QAD alone and then have the option of terminating the mediation. SUBRAMANIAN also told WULFF that Vedatech Parties would consider the entire mediation to be over if SUBRAMANIAN so chose to leave. WULFF agreed to these conditions.

The bilateral proposed agreement with WULFF

52. At this point, WULFF presented the old CONFIDENTIALITY AGREEMENT to SUBRAMANIAN for signature and SUBRAMANIAN reminded WULFF of the email he had sent with the proposed bilateral agreement. WULFF rejected the proposal made by SUBRAMANIAN and started making several changes to the draft sent by SUBRAMANIAN. In addition, SUBRAMANIAN explained Mr Richards' prior assurances about the "conflicts check". Then, for the first time SUBRAMANIAN and VEDATECH were given a document called "Mediation Procedures", which had buried among other language the following text, and which SUBRAMANIAN did not notice at that time:

"Any past professional acquaintance with counsel o[n] prior matters I have mediated for any counsel or parties will not be included in any disclosure being made; I rely on the parties and counsel to advise one another of this, if appropriate"

53. This is made even more egregious because SUBRAMANIAN insisted unsuccessfully that all terms of the confidentiality agreement should be within that one document and should not refer to any another document. WULFF insisted on referring to this separate document titled "CONFLICTS CHECK". In addition, WULFF assured SUBRAMANIAN that the purpose of this separate page titled "CONFLICTS CHECK" was to take into consideration the fact that he had worked for a large firm before. WULFF further stated that this prior firm had many clients that WULFF did not even know anything about, and it would be impossible for him to do a conflicts check with all such entities that he had had no contact with or had not represented. At no point during this conversation did WULFF

1 mention that he had worked with ST.PAUL or Mr. Greenan before, nor did he alert
2 SUBRAMANIAN to the passage in the text (excerpted above) that was outside the scope of
3 the verbal assurances he was providing SUBRAMANIAN.

4 54. Even at this stage, and especially at this stage, if SUBRAMANIAN had
5 known that Mr. Greenan or his firm or ST.PAUL had personally conducted prior mediations
6 of any sort with WULFF, or if ST.PAUL or WULFF had disclosed such matters to him, as
7 they should have, SUBRAMANIAN would have withdrawn before the start of the mediation.

8 **Duress in signing the bilateral agreement**

9 55. Thus, although SUBRAMANIAN had sent WULFF a draft ahead of the
10 mediation, WULFF had not reviewed the draft, and at the last minute was making various
11 changes to it and insisting that the document be signed before he would start the mediation.
12 On the other hand, WULFF discouraged SUBRAMANIAN from leaving or canceling the
13 whole mediation, which is what SUBRAMANIAN wanted to do in light of the severe
14 conflicts of interest posed by ST.PAUL mixing up coverage and settlement issues.

15 **Document not signed by WULFF**

16 56. In light of the various assurances provided by WULFF and on the assumption
17 that ST.PAUL and/or WULFF would have informed SUBRAMANIAN of any prior contacts,
18 SUBRAMANIAN signed this revised document titled “CONFIDENTIALITY
19 AGREEMENT”. WULFF did not sign the document.

20 **Failure of discussions with QAD**

21 57. The discussions with QAD eventually failed. At this point, around 4:00 PM,
22 SUBRAMANIAN informed the mediator that the mediation was formally over and promptly
23 left. SUBRAMANIAN also explicitly informed the mediator that the mediation was
24 terminated. Vedatech Parties believe that many of the acts of WULFF, ST.PAUL and QAD
25 under the rubric of “mediation” are unlawful, unfair and fraudulent. Vedatech Parties will
26 further detail such activities if the Court permits such evidence to be introduced.

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Continuation of discussions between ST.PAUL and QAD and WULFF

58. Despite the departure by Vedatech Parties, WULFF continued the discussions with ST.PAUL and QAD and conducted various negotiations, even though the mediation was called off, and even though WULFF was well informed of the conflicts of interest between the two roles of ST.PAUL as insurer and the instigator of coverage disputes.

WULFF as advocate of ST.PAUL and QAD and against SUBRAMANIAN

59. In continuing such mediations, WULFF breached his promises to the parties and his duties to be an impartial mediator, and worked with QAD and ST.PAUL in a collusive and conspiratorial manner to the detriment of Vedatech Parties.

No agreement between ST.PAUL and QAD on Monday, March 15, 2004

60. On March 15, 2004, SUBRAMANIAN met Mr Enoch Wang, the associate working under Mr Greenan on the coverage issues, at an *ex parte* hearing at the Court. Later, Mr Wang came to the offices of attorneys for VEDATECH to go over documents produced by QAD in the underlying litigation. Mr Wang did not provide any information at all regarding any negotiations or agreement between QAD and ST.PAUL.

Removal of QAD-Case to Federal Court on March 15, 2004

61. On March 15, 2004, Vedatech Parties removed the QAD-Case to federal court. Vedatech Parties had assumed that the mediation was called off after they left around 4:00 PM on March 12, 2004. No information to the contrary was received.

Announcement of secretly concluded “settlement” between QAD and ST.PAUL

62. On March 16, 2004, ST.PAUL and QAD unsuccessfully attempted to have the QAD claims dismissed so that the removal of the QAD-Case can be defeated.

Details of this clandestine agreement not provided in spite of repeated requests

63. On March 16, 2004, Mr Greenan, coverage attorney for ST.PAUL, after repeated requests from SUBRAMANIAN, would only state that no settlement papers had been prepared. On March 18, 2004, Mr Greenan for ST.PAUL, finally relented and stated

only that “an agreement in principle was reached with QAD ... the details of the agreement have not yet been reduced to writing, as the agreement was reached through the mediator.”

Confirmation of WULFF’s role in the mediation

64. Thus, it was Mr Greenan’s email (ST.PAUL) dated March 18, 2004, that first alerted Plaintiffs to the fact that WULFF was continuing to assist ST.PAUL and QAD even though SUBRAMANIAN had specifically called off the mediation after discussions with QAD had failed to produce a negotiated settlement.

NO OPTION TO VEDATECH PARTIES TO TAKE OVER DEFENSE

65. This “settlement” and “agreement and release” was entered into without allowing Vedatech Parties the option of releasing ST.PAUL from any bad faith claims for not paying for future defense costs, partial or otherwise, going forward from the time of any such agreement. Additionally, Vedatech Parties were not given the option of releasing ST.PAUL from any liability for Judgments in excess of policy limits. Indeed, since even QAD’s unrealistic estimates of damages were themselves much less than the policy limits, this scenario was improbable if not an impossibility. ST.PAUL always knew that there was no realistic chance of any Judgment being in excess of the applicable policy limits.

The “agreement” between QAD and ST.PAUL reached on March 25, 2004

66. On March 25, 2004, Mr Wang for ST.PAUL sent a copy of a signed document attached as Exhibit A of this Complaint (titled “AGREEMENT AND RELEASE”) that purports to be the settlement agreement that St.Paul reached with QAD. It is signed by Karl Lopker, CEO of QAD Inc., and Valerie Miller, an officer of QAD Inc., for QAD Japan K.K., and (on a separate piece of paper) by Mr Joe Tancredy, claims adjuster for ST.PAUL.

Real purpose of this secret “agreement and release”

67. ST.PAUL wishes to escape its obligations regarding its duty to defend involving the QAD litigation. ST.PAUL also wishes to find excuses for not paying outstanding legal bills to various attorneys. ST.PAUL also wishes to weaken Vedatech

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Parties's legal representation in the coverage litigation. In this coverage litigation, Vedatech Parties have counterclaims for bad faith actions by ST.PAUL at least until the date of Vedatech's answer to the declaratory relief action by ST.PAUL. ST.PAUL also wishes to defeat Federal Jurisdiction which would involve further defense costs regarding copyright and other issues.

QAD's multi-year effort to weaken Vedatech Parties' legal representation

68. QAD wishes to weaken Vedatech Parties's legal representation for the affirmative claims. QAD knows that its own claims are meritless and is happy to accept ST.PAUL's monies if it would weaken the position of Vedatech Parties in the overall litigation. QAD has, since 1997 repeatedly tried to interfere with or weaken legal representation for Plaintiffs. These acts involved QAD's internal counsel, Mr Roland Desilets writing a letter to Morrison and Foerster and trying to conflict them out for representing a bank that was *adverse* to QAD! In addition, Mr Desilets made overtures to attorneys at Bogle and Gates after that firm fell apart in 1999, trying to get them not to represent SUBRAMANIAN or VEDATECH anymore. The current "agreement and release" has been intentionally designed by ST.PAUL and QAD, with the unlawful use of the process of mediation and the mediator to harm Plaintiffs for the benefit of ST.PAUL and QAD.

ST.PAUL now refuses to pay even for past limited defense costs

69. Predictably, after its secretly obtained "agreement and release" with QAD, ST.PAUL has refused to reimburse for large portions of even the limited defense costs that it had promised to Vedatech Parties in their standstill agreement of July 2002. These non-reimbursed amounts exceed US\$ 200,000. ST.PAUL induced Vedatech Parties to hire attorneys in July 2002 with promises of limited reimbursement. Vedatech Parties would not have attended the mediation if they knew of ST.PAUL's plans to withhold their partial reimbursements for past defense costs. Now that ST.PAUL claims it has "settled" the QAD claims, it feels free to put pressure on Vedatech's attorneys.

**FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)**

70. Vedatech Parties reallege all of the allegations of paragraphs 1-69 above.

Existence of Controversy

71. There has arisen between the parties, actual substantial and justiciable controversies over the validity, interpretation, authority to enter into, and other aspects of the purported contractual document in Exhibit A. Specifically, Plaintiffs wish judicial determination of the validity, scope, and interpretation of this “agreement and release” between ST.PAUL and QAD (and which directly affects Plaintiffs’ rights). Plaintiffs contend that this “agreement and release” is void, was entered into by ST.PAUL without authority, and was the effort of collusive and unlawful secret negotiations by ST.PAUL.⁸

⁸ Both ST.PAUL and QAD attempt to rely on a California Court of Appeals decision in Hurvitz v St.Paul Fire & Marine Insurance Co., (2003) 109 Cal.App.4th 918. That decision cannot in any way support the propositions that ST.PAUL and QAD are advancing. For example, in Hurvitz, supra, p.934, it is clearly explained that:

The Hurvitzes attempted to prevent St. Paul from settling with Dr. Hoefflin, but, notwithstanding their professed expectations of an easy victory, at no time indicated a willingness to give up their right to indemnity from St. Paul if Dr. Hoefflin won a judgment in excess of the proposed settlement. Nor did they agree to give up their right to seek a bad faith recovery against St. Paul if a judgment was obtained against them in excess of policy limits.

In this case, first of all there was no open settlement offer from QAD. The whole process was a secret, collusive bad faith conspiracy by St.Paul and QAD to find a way to benefit themselves at Vedatech Parties’ expense. Vedatech was not even informed of a tentative offer or settlement from QAD. The result of an “oral agreement in principle” was “announced” in open Court to the surprise of Vedatech Parties on the morning of March 16, 2004. St.Paul never gave Vedatech Parties a chance to consider such an offer. Vedatech’s attempts to raise such possibilities were summarily rejected by ST.PAUL through their coverage attorney Mr. Greenan.

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72. Furthermore, ST.PAUL still wishes to continue with the declaratory relief action to try to recover already disbursed costs of defense in the QAD case.

Rescission of the CONFIDENTIALITY AGREEMENT with the mediator

73. Plaintiffs have rescinded the CONFIDENTIALITY AGREEMENT with WULFF for fraud, misrepresentation, duress, want of execution, lack of acceptance of offer, and for other lawful reasons. Plaintiffs have issued a proper notice of rescission to WULFF. In response, WULFF contests the rescission of this secondary agreement. Plaintiffs seek a Judicial confirmation of the validity the rescission of this secondary agreement.

Statutory basis for Prayer

74. Plaintiffs base their request for declaratory judgment on Title 28, United States Code § 2201, for the purpose of determining questions of such actual controversies between the parties and as detailed more fully in this Complaint.

The mischief in ST.PAUL's "settlement"

75. ST.PAUL (and QAD and WULFF) know clearly that QAD's claims, even in the case of a default Judgment cannot result in damages in excess of the policy limits. The policy limits are anywhere between \$2 Million and more than \$12 Million depending on the period of coverage and the inclusion of "umbrella" provisions.

76. WITHOUT THIS "SETTLEMENT":

- ST.PAUL would still be prevented from proceeding full steam with its "coverage action" because of the conflicts with the QAD-Case.
- The insurance policies in question are not "self-burning" and hence the defense costs are not limited by the policy limits.

- Withholding past defense costs (even on the limited basis that ST.PAUL has been reimbursing them for), would seriously expose ST.PAUL for further bad faith actions in light of interference with an ongoing defense.

77. BUT WITH THIS “SETTLEMENT”:

- ST.PAUL now claims to be free to litigate all of the QAD-related issues in order to try to recover their past defense costs
- ST.PAUL are withholding past defense costs (even on their own limited “standstill agreement,” more than \$200,000,);
- A side-benefit for ST.PAUL is weakening of Vedatech Parties legal representation (by causing financial distress to their attorneys) and thereby improving their position in the coverage litigation;

There is real damage to Plaintiffs if declaratory relief is not granted

78. The threatened action by ST.PAUL and QAD, viz., the compromise of QAD’s claims (ostensibly good for Plaintiffs) but on the condition that ST.PAUL will unilaterally exhaust \$500,000 of Plaintiffs’ available insurance limit and still “reserve” their rights to recover that from Plaintiffs is tantamount to a coercive and unlawful foisting of liability on Plaintiffs for which the apparent justification is that the insurance policies provide such a contractual right.

79. Plaintiffs have been denied their rights to choose to pursue their own defense and clear their names [see footnote 9 above regarding the distinction with the *Hurvitz* case.]

80. In addition, ST.PAUL is continuing with its coverage on the basis of “reservation of rights” with respect to various causes of action in the QAD-Case. Plaintiffs will have to re-litigate the exact same issues that are purportedly “released”.

St.Paul's Purported Authority to Settle QAD's Claims

81. The Commercial General Liability (CGL) policies of ST.PAUL issued to Vedatech Parties have the following language under the section titled

COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY

[...]

[...] We may, at our discretion, investigate any "occurrence" or offense and settle any claim of "suit" that may result."

82. On the other hand, in the coverage litigation (C-04-01818), ST.PAUL pleads rescission of these very same policies. To wit, the Fifth Cause of Action of ST.PAUL is pleaded as follows ("Plaintiffs" in the excerpt below refers to ST.PAUL and "defendants" in the excerpt below to Vedatech Parties):

FIFTH CAUSE OF ACTION

(Declaratory Relief - Rescission [sic])

[...]

52. Plaintiffs contend that defendants made false representations which were material to the issuance of the insurance policies, that Plaintiffs were unaware these representations were false, and that the policies should accordingly be rescinded and rendered null and void

83. California Civil Code §1691 provides for a party to give a notice of rescission and thus effect the same (i.e. rescission). It also provides that the service of a pleading in an action or proceeding that seeks relief based on rescission shall be deemed to be such notice.

84. Since California abolished the equitable action for "rescission" in 1961, it has to be assumed that St.Paul in its Declaratory Action in State Court is asking for various declarations based on its own unilateral election to rescind and the effectiveness of the same, i.e. based on the premise that it has already rescinded the insurance policies.

85. Any orders by the Court restoring parties to the position before such rescission (if it is valid) does not affect the date or effectiveness of rescission, which is the date of commencement of the coverage litigation, viz., Feb 2002.

86. If these insurance policies are “null and void”, and already rescinded, as ST.PAUL claims, and especially if they are so null and void because of Vedatech’s alleged pre-contractual misrepresentations, then it would be unlawful for ST.PAUL to depend on null and void agreements to gain the right to unilaterally, in their “discretion,” to enter into this “agreement and release” with QAD that affects Vedatech’s substantive rights, with respect to settlement of claims or otherwise. Furthermore, under California Civil Code §1691, ST.PAUL’s declaratory suit itself serves as a notice of rescission and thus effects rescission unless found otherwise by the Court. Thus, until a final Judgment is reached in the insurance coverage litigation, and the issue and question of, and effectiveness of ST.PAUL’s rescission is judicially determined, ST.PAUL cannot act inconsistently with its position that the policies have been rescinded. Thus, ST.PAUL on its own position has acted without authority, or ST.PAUL is estopped from asserting such authority while at the same time seeking to have the contracts be declared null and void in its coverage action.

87. In addition, the purpose for which ST.PAUL has unlawfully manufactured this “agreement and release” has to do with gaining advantages in the coverage litigation, weakening Plaintiffs and helping QAD to indirectly weaken Plaintiffs (provide them funds for resisting Plaintiffs’ counterclaims / affirmative claims). It would be inequitable for ST.PAUL to be permitted to proceed in this fashion.

88. Plaintiffs would also not be able to clear their names and prove their innocence in the QAD case. Plaintiffs’ rights to prosecute QAD for malicious prosecution would be compromised by this “settlement”. Nevertheless, Plaintiffs would be facing litigation of the very same issues in the coverage case with ST.PAUL.

89. In addition, the “agreement and release” has not prevented QAD from publicly accusing Vedatech of all of the matters (and more) that is the subject of its misguided Complaint in the QAD-Case. In its support of remand in C-04-01035, Mr Connell, attorney for QAD has elaborated on the fabrications of the original Complaint, further maligning Vedatech Parties in spite of an “agreement and release” where QAD apparently gives up its claims on all these matters. In proceeding with their affirmative claims against QAD, Vedatech Parties will have to “defend” against such claims in spite of this so-called “agreement”. To the extent that it affects juries to diminish the award to Vedatech Parties, these allegations would act as a “set-off” for QAD, thus undermining any finality of this “release”. It is for this reason also, the Settlement Agreement must be set aside and a declaration of its voidness made.

DECLARATIONS REQUESTED

90. Accordingly, Vedatech Parties respectfully request the Court for one or more of the following declarations or any other declaration in a form determined by the Court, all as the Court deems appropriate:

With respect to Defendant ST.PAUL

- a. THAT the purported settlement agreement, “agreement and release” dated March 25, 2004, between QAD and ST.PAUL is null and void, and/or unenforceable.
- b. THAT ST.PAUL had no authority to enter into this “agreement and release” on behalf of VEDATECH and/or SUBRAMANIAN;
- c. That any payment made by ST.PAUL cannot be used to deduct available benefits to Vedatech Parties from any of their policy agreements with ST.PAUL;

- d. THAT any payments ST.PAUL may make is not on behalf of the “Insured or Putative Insureds” as set out in paragraph 2 of this agreement but is a voluntary payment undertaken by ST.PAUL for its own benefit;
- e. That ST.PAUL has no right of reimbursement from VEDATECH or SUBRAMANIAN for the amounts it may pay under this agreement;
- f. That ST.PAUL is not permitted to “reserve” any rights with respect to any payment under this agreement;
- g. THAT ST.PAUL has acted in bad faith and breached its duties as an insurer to Vedatech Parties as insureds by collusively and secretly conducting such negotiations with QAD and by using the cloak of settlement privilege for unlawful and improper purposes;
- h. THAT ST.PAUL may not use any monies it may pay under the “agreement and release” as a set-off in any action between Vedatech Parties and ST.PAUL;
- i. THAT ST.PAUL cannot recover such payments even if the policies are null and void as ST.PAUL claims they are;
- j. THAT all discussions between ST.PAUL and QAD are not subject to any evidentiary privilege or protection and are discoverable;
- k. THAT all discussions between ST.PAUL and QAD made through or ostensibly through the mediator are also not subject to any evidentiary privilege of protection and are discoverable;
- l. THAT ST.PAUL is liable to pay past legal bills due on the same terms and conditions it has been paying them before this “agreement and release” was secretly concluded and that ST.PAUL take no efforts to unfairly withhold such payments under the excuse of having concluded such an agreement;

- 1 m. THAT ST.PAUL has no rights to “audit” any such bills beyond legal proceedings
2 for any fault it may think there is or, alternatively, raise such issues in this
3 litigation or in the underlying coverage litigation;
4 n. THAT ST.PAUL cannot re-litigate the QAD claims that are purportedly released
5 in the “agreement and release” in the underlying coverage litigation or otherwise;

6 **With respect to Defendant QAD**

- 7
8 o. THAT any release “with prejudice” by QAD parties not be referable to this
9 “agreement and release”;
10 p. THAT any dismissal “with prejudice” of QAD’s complaint(s) against any or all of
11 the Vedatech Parties be final and shall not be affected by any adjudication of the
12 status or validity or enforceability of the “agreement and release” signed between
13 ST.PAUL and QAD.
14 q. THAT to the extent that QAD has released or will release any claims against
15 VEDATECH or SUBRAMANIAN its only remedies remain against ST.PAUL;
16 r. THAT, if QAD releases any rights or claims under this agreement, then it may not
17 raise any issues relating to such rights or claims in any judicial proceedings, as a
18 defense or for any other purpose and that no setoff of any kind is permissible;
19 s. THAT QAD, at a minimum, cannot rely upon the settlement evidentiary privilege
20 for negotiations regarding this “agreement and release”, especially after
21 SUBRAMANIAN terminated the mediation around 4 PM on March 12, 2004;
22 t. THAT QAD transfer to Vedatech Parties all of the monies it received from
23 ST.PAUL under this “agreement and release”, [either under a theory of Unjust
24 Enrichment or as a remedy to the Cause of Action for Unfair Competition /
25 disgorgement of profits as detailed below].
26

With respect to Defendants ST.PAUL and QAD

- u. THAT, in any event, this “agreement and release” not be given effect until the underlying coverage litigation between ST.PAUL and Plaintiffs is finally resolved and all issues regarding the validity of the various policies and rights of the parties under such policies are finally determined by the Courts.

With respect to Defendant WULFF

- v. THAT, the “confidentiality agreement” has been properly rescinded.
- w. THAT no evidentiary privilege attaches to any aspect of the “mediation” described herein, especially after its termination by Vedatech Parties around 4:00 PM on March 12, 2004;

**SECOND CAUSE OF ACTION
(INJUNCTIVE RELIEF)**

91. Vedatech Parties reallege paragraphs 1-90 above.

Inadequacy of Remedy in Law

92. Plaintiffs have no adequate or speedy remedy at law for Defendants’ conduct (and threatened conduct) detailed herein, and this action for injunctive relief is Plaintiffs’ only certain means for securing relief.

93. ST.PAUL has already rescinded its own policies (contracts) and if they prevail in their cause of action for “Declaratory Relief – Recission [sic]” in the underlying coverage case, then Plaintiffs are left with no meaningful remedy in law if, for example, QAD wishes to argue a basis for remand to State Court of C-04-01818 based on dismissal of claims in reliance of this ineffective “agreement and release.”

94. ST.PAUL and QAD are clearly colluding to try to defeat Federal Jurisdiction with respect to the underlying consolidated actions removed from State Court.

95. If the claims against Plaintiffs are dismissed but later found to be improperly dismissed (i.e. without affording Vedatech Parties a chance to clear their names, and the right to pursue QAD for malicious prosecution, etc.), then the results of any further proceedings both in the QAD matter and in the insurance matter cannot be reversed.

96. Vedatech Parties are being forced to defend these “dismissed” claims in the context of the Coverage action. There is no real benefit to the insureds at all, which is the real problem with this “release”.

No Harm to ST.PAUL or QAD

97. ST.PAUL has provided a notice of rescission by filing their suit. There is no reason for ST.PAUL to have any expectation of being able to exercise any such rescinded contractual rights. Alternatively, ST.PAUL should be denied any rights to further rescind the insurance policies, having relied upon them to cause prejudice to Vedatech Parties.

98. ST.PAUL has repeatedly referred to their partial reimbursement of defense costs in the underlying QAD litigation. But that was, and has always been voluntary and amounts to ST.PAUL’s strategy of implementing a program of self-insurance and mitigation of damages, *in case* their baseless theories regarding rescission are judicially adjudged to be wrong. The fact that ST.PAUL was hedging their bets should not be a cause for any prejudice to Plaintiffs. Indeed, Plaintiffs have not even been given an option of proceeding with their own defense as an alternative to ST.PAUL entering into such collusive and secret agreements behind the back of Plaintiffs. QAD still has to defend against Vedatech Parties’ claims. The issues are identical and there is not savings in judicial time or efficiency in “settling” QAD’s claims. If QAD sincerely considers its claims to be worth \$500,000 or more, then not involving in this “compromise” exchange cannot harm QAD.

Injunctive Relief Requested

99. WHEREFORE, Plaintiffs respectfully request the Court to issue an injunction with respect to one or more of the following imminent acts of Defendants (and their officers, agents, employees, successors, and attorneys, and all those in active concert or participation with Defendants), enjoining and restraining Defendants either, permanently and perpetually or until a final Judgment (including appeals) is entered in the underlying insurance Declaratory Relief action commenced by ST.PAUL (C-04-01818). The Court is also requested to order additional injunctions as appropriate:

- a. ST.PAUL to be ordered not to pay any monies directly or indirectly to QAD or related parties under paragraph 2 of the “agreement and release,” a copy of which is attached as Exhibit A to this Complaint;
- b. ST.PAUL to be ordered not to pay directly or indirectly any monies to QAD or any other related party at all, wherein such a payment is or can be construed as being on behalf of Plaintiffs (referred to as “Insured and Putative Insureds” in Paragraph 2 of the “agreement and release”);
- c. ST.PAUL to be ordered not to pay directly or indirectly any monies to QAD or any other related party at all, wherein such payments create any liability for payments or set-offs of any sort, present or future on the part of Plaintiffs;
- d. ST.PAUL to be ordered to pay past due legal bills without any further delays;
- e. ST.PAUL and QAD be enjoined from trying to enforce this “agreement and release” in this Court or otherwise until the underlying coverage litigation and this action itself is resolved;
- f. ST.PAUL be enjoined from re-litigating the QAD claims in part or whole in the underlying coverage litigation;

- g. ST.PAUL and QAD and WULFF to be ordered to provide full details of all their negotiations relating to the “mediation” and the “agreement and release”;
- h. QAD be ordered not to bring any proceedings or motions in reliance of this “agreement and release”;
- i. QAD be ordered not to act in reliance of this agreement in any way whatsoever;
- j. QAD be ordered to produce all insurance policies in the period 1994 through the current period, including D&O policies and CGL policies;

Damages

100. As a proximate result of such threatened activities of Defendants, Vedatech Parties have sustained damages including various attorney fees and costs and pray that such amounts be ordered to be paid to Plaintiffs by Defendants.

101. The actual damages to Plaintiffs if Defendants are permitted to pursue their threatened actions are in an amount in excess of \$75,000.

THIRD CAUSE OF ACTION (FRAUD – INTENTIONAL MISREPRESENTATION)

102. Vedatech Parties reallege all of the allegations of paragraphs 1-101 above.

Representations by ST.PAUL regarding purpose of “mediation” and the aggressive promotion of WULFF as a mediator

103. ST.PAUL concealed from Plaintiffs the true reasons for their desire to conduct a mediation. ST.PAUL’s non-disclosure of their pre-meditated plans of using the cloak of secrecy surrounding the mediation to engage in insurance bad faith actions is a deliberate misrepresentation. Such misrepresentation and non-disclosure was intended by ST.PAUL to induce Plaintiffs to consent to such a *faux*-mediation. ST.PAUL obtained Court orders based on such fraudulently procured “consent” and then freely conducted their bad faith activities with the cooperation of WULFF and then QAD.

Representations by ST.PAUL regarding contacts with WULFF

104. Although ST.PAUL had fiduciary-like duties towards its insureds, it failed to disclose the nature and details of ST.PAUL's and its attorneys' prior contacts and relationship with WULFF. ST.PAUL should have made such disclosure before it obtained Plaintiffs' consent which consent was the stated basis for the Court order(s) regarding mediation. Such non-disclosure is deliberate misrepresentation. In addition, ST.PAUL actively promoted WULFF as a proper neutral. ST.PAUL aggressively prevented the choice of alternative neutrals even when there was a scheduling problem with WULFF vis-à-vis the convenience of SUBRAMANIAN. Thus, the Court order of January 13, 2003 and all further orders regarding mediation were fraudulently obtained and the consent of Plaintiffs to such orders was obtained by such fraudulent representations and intentional non-disclosures.

Representations by WULFF regarding neutrality

105. WULFF represented to Vedatech Parties that he would not act as an advocate for any party. In addition, Mr Richards, the assistant to WULFF assured Vedatech Parties that a conflicts check had been made and there are no conflicts with respect to the actual parties to the mediation. This was and is a deliberate misrepresentation. Mr Richards at that time did not inform Plaintiffs about the more limited written "conflicts check" provision, which had loopholes for hiding the relationship that WULFF had with ST.PAUL. Mr. Richards is an agent of WULFF. WULFF is responsible for the fraudulent representations of Mr. Richards. WULFF further confirmed and added to Mr. Richards' misrepresentations on the day of the mediation and before the mediation started. Furthermore, WULFF did not provide Vedatech Parties with a reasonable opportunity to read or check the newly presented "conflicts check" documents, which was included in another document under duress.

106. Before the start of the Mediation, WULFF further assured SUBRAMANIAN that SUBRAMANIAN could terminate the mediation any time SUBRAMANIAN wanted to,

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1 and especially if and after SUBRAMANIAN initially made an effort to settle with QAD.
2 WULFF had no intention of terminating the mediation if SUBRAMANIAN terminated it.
3 Such assurances were false. ST.PAUL and WULFF needed the fig leaf of the participation
4 by SUBRAMANIAN, just to lend an air of legitimacy for their premeditated plans for
5 helping ST.PAUL benefit themselves (and QAD) at the expense of Vedatech Parties.

6 **Intention to Induce Plaintiffs**

7
8 107. WULFF and ST.PAUL intended Plaintiffs to rely upon these
9 misrepresentations and fraudulent statements and deliberate non-disclosures and thus
10 intended to and did induce them to attend the mediation under terms that were favorable to
11 them and harmful to Plaintiffs. WULFF and ST.PAUL knew at all times that Plaintiffs
12 would rely upon such statements. WULFF and ST.PAUL needed SUBRAMANIAN to join
13 the mediation at least in the beginning as they could not otherwise engage in such
14 negotiations with QAD under the cloak of secrecy provided by a “mediation”.

15 **Falsity and Knowledge of Falsity of these various representations**

16 108. All of the representations above were false and WULFF and ST.PAUL always
17 knew that they were so false. From information and belief, WULFF has conducted various
18 other mediations for ST.PAUL and/or Mr Greenan, the attorney for ST.PAUL and/or the firm
19 that Mr Greenan works in. Notwithstanding potential conflicts because of such prior
20 representation, such information was not disclosed to Plaintiffs by ST.PAUL or its attorneys
21 or by WULFF. Had Plaintiffs been aware of such prior contacts, they would not have agreed
22 to participating in this mediation at all or consented to the January 13, 2004 “order”

23 109. In addition, if Plaintiffs were aware of the falsity of such statements, even
24 after the January 13, 2004 order or the further orders, they would have applied to the Court to
25 set aside such Orders and would have sought relief from attending the mediation or
26 withdrawn from it immediately.

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Reliance on these Misrepresentations

110. Vedatech Parties were unaware of the falsity of these representations, were unaware of the information that was deliberately withheld from them, and relied upon these misrepresentations and, in the absence of proper disclosure, their reasonable beliefs as to the state of affairs, in “consenting” to the January 13, 2004 order, and not fully opposing further orders, participating even in the limited fashion in the mediation and in staying back briefly after initially telling WULFF before the mediation started that they wished to withdraw.

Proximate Harm and Damages

111. As a proximate result of such reliance upon the false promises of these Defendants, Vedatech Parties have sustained heavy damages, and continue to sustain damages, including, but not limited to, further delay in pursuing legal remedies with respect to their claims, costs related to various satellite litigation necessitated by such fraud, potential compromise of their underlying claims, consequential damages caused by SUBRAMANIAN’s inability to conduct other business and other incidental damages.

112. The actual damages are in an amount in excess of \$75,000, and to be determined at trial.

Exemplary and Punitive Damages

113. The acts and conduct of these Defendants were, and continue to be oppressive, fraudulent, and malicious. Defendants knew or should have known, (and, in addition, know or should know) that their conduct would harm Vedatech Parties.

114. Defendants’ actions were, and continue to be undertaken for the specific purpose of enriching themselves at the expense of Vedatech Parties. Vedatech Parties therefore seek, and are entitled to recover, punitive and exemplary damages in the amount to be determined at trial.

(CONSPIRACY TO COMMIT FRAUD / MISREPRESENTATION)

115. Plaintiffs reallege the allegations of paragraphs 1-114 above.

116. The various defendants, ST.PAUL, and WULFF acted in collusion with each other and other parties, and intended to commit and had the common purpose of committing the fraud alleged herein and profiting from the same at the expense of Vedatech Parties.

Participation by QAD

117. Defendant QAD became aware of the fraudulent schemes during the mediation, and initially through WULFF and/or ST.PAUL. Subsequently, willingly, and with an intent to harm Vedatech Parties, and with full knowledge of the details, purpose and intent of the parties thereof, QAD participated in the ongoing fraudulent scheme of ST.PAUL and WULFF. QAD especially relied upon the idea that the cloak of secrecy in mediation can be used to engage in fraudulent and collusive schemes to benefit themselves and ST.PAUL at the expense of Vedatech Parties.

118. Defendants are jointly and severally liable for the fraud and misrepresentation that either of them engaged in.

Exemplary and Punitive Damages

119. The acts and conduct of Defendants were, and continue to be oppressive, fraudulent, and malicious. Defendants knew or should have known, (and, in addition, know or should know) that their conduct would harm Vedatech Parties.

120. Defendants' actions were, and continue to be undertaken for the specific purpose of enriching themselves at the expense of Vedatech Parties. Vedatech Parties therefore seek, and are entitled to recover, punitive and exemplary damages in the amount to be determined at trial.

**FOURTH CAUSE OF ACTION
(CONSTRUCTIVE FRAUD)**

121. Vedatech Parties reallege paragraphs 1-120 above.

Duty of Care / Confidential Relationship / Fiduciary-like duties

122. ST.PAUL in the position of an insurer had fiduciary-like duties towards its insureds. ST.PAUL further had a confidential relationship arising from the participation in a mediation. ST.PAUL breached their duties towards Vedatech Parties by their conduct described herein. ST.PAUL failed to disclose various material facts, and intended to conceal such material facts from Vedatech Parties, in an effort to harm Vedatech Parties and benefit themselves economically. Vedatech Parties relied to their own detriment upon the trust they placed in ST.PAUL (as the insurer).

123. Accordingly the facts alleged above constitute liability on the part of ST.PAUL and WULFF for constructive fraud.

124. WULFF in the position of a self-declared neutral and a mediator was in a confidential relationship with Vedatech Parties. WULFF further had a confidential relationship arising from the conduct of this particular mediation where he was supposed to help Vedatech Parties on the same footing as all of the other participants. WULFF breached his duties towards Vedatech Parties by his conduct described herein. WULFF failed to disclose various material facts, and intended to and did conceal such material facts from Vedatech Parties, in an effort to harm Vedatech Parties and benefit himself economically. Vedatech Parties relied to their own detriment upon the trust they placed in WULFF (as the mediator).

125. Accordingly the facts alleged above constitute liability individually and jointly on the part of WULFF for constructive fraud.

Damages

126. As a proximate result of such reliance upon the false promises and non-disclosures of Defendants, Vedatech Parties have sustained heavy damages, and continue to sustain damages, including, but not limited to, further delay in pursuing legal remedies with respect to their claims, costs related to various satellite litigation necessitated by such fraud, potential compromise of their underlying claims, consequential damages caused by SUBRAMANIAN's inability to conduct other business and other incidental damages.

127. The actual damages are in an amount in excess of \$75,000, and to be determined at trial.

Exemplary and Punitive Damages

128. The acts and conduct of Defendants were, and continue to be oppressive, fraudulent, and malicious. Defendants knew or should have known, (and, in addition, know or should know) that their conduct would harm Vedatech Parties.

129. Defendants' actions were, and continue to be undertaken for the specific purpose of enriching themselves at the expense of Vedatech Parties. Vedatech Parties therefore seek, and are entitled to recover, punitive and exemplary damages in the amount to be determined at trial.

(CONSPIRACY REGARDING CONSTRUCTIVE FRAUD)

130. Plaintiffs reallege the allegations of paragraphs 1-129 above.

131. Defendants WULFF was aware of the purpose and intent of ST.PAUL in their plans to harm Vedatech Parties. WULFF acted in collusion with ST.PAUL in furtherance of the unlawful activities of ST.PAUL alleged herein. WULFF joined in the conspiracy in furtherance of his own individual economic interests (e.g. continuing business with ST.PAUL and their attorneys, Mr Greenan and his law firm).

1 132. WULFF is jointly and severally liable for the constructive fraud committed on
2 Vedatech Parties by ST.PAUL.

3 133. Defendants ST.PAUL was aware of the purpose and intent of WULFF in his
4 plans to harm Vedatech Parties. ST.PAUL acted in collusion with WULFF in furtherance of
5 the unlawful activities of WULFF alleged herein. ST.PAUL joined in the conspiracy in
6 furtherance of its own individual economic interests (e.g. unfairly gaining advantage in the
7 coverage litigation, weakening Vedatech Parties' legal representation etc.).

8 134. ST.PAUL is jointly and severally liable for the constructive fraud committed
9 on Vedatech Parties by WULFF.

10 135. Defendant QAD joined these conspiracies in furtherance of its own individual
11 economic interests, and at the expense of Vedatech Parties. QAD intended to gain various
12 benefits (e.g. a Settlement amount from ST.PAUL in return for dropping its worthless claims,
13 avoidance of malicious prosecution claims from Vedatech Parties, weakening Vedatech
14 Parties' legal representation – the last a multi-year ongoing effort by QAD, their in-house
15 counsel Mr Roland Desilets, and their attorney Mr. Connell that is ongoing to this day.)

16 136. QAD intended to harm Vedatech parties and is liable as a co-conspirator for
17 the acts and liabilities of ST.PAUL and/or WULFF.⁹

18 137. In addition, *to the extent* that ST.PAUL, and/or WULFF and/or QAD rely
19 upon any agreement, formal or informal to participate in the mediation (as a forum for
20 negotiating a settlement,) that agreement or those agreements (or the Court order itself)
21 include(s) an implied covenant of good faith and fair dealing towards Vedatech Parties.

22 _____
23 ⁹ See e.g., *City of Atascadero v St.Paul Fire & Merrill Lynch.*, (1998)
24 68 Cal.App.4th 445, 464 and n.14 thereof (discussing civil conspiracy):

25 *As long as the third parties were acting to further their own individual economic*
26 *interests, they may be liable for actively participating in a fiduciary's breach of his or her*
trust.

Exemplary and Punitive Damages

138. The acts and conduct of Defendants were, and continue to be oppressive, fraudulent, and malicious. Defendants knew or should have known, (and, in addition, know or should know) that their conduct would harm Vedatech Parties. Plaintiffs' actions were, and continue to be undertaken for the specific purpose of enriching themselves at the expense of Vedatech Parties. Vedatech Parties therefore seek, and are entitled to recover, punitive and exemplary damages in the amount to be determined at trial.

FIFTH CAUSE OF ACTION (NEGLIGENT MISREPRESENTATION)

139. Vedatech Parties reallege all of the allegations made in paragraphs 1-138 above.

140. In the alternative to the cause of action for intentional fraud, it is alleged in the alternative that Defendants ST.PAUL, WULFF, and DOES 1-50 made the various representations without any reasonable grounds for believing them to be true.

Damages

141. As a proximate result of such reliance upon the false promises of these Defendants, Vedatech Parties have sustained heavy damages, and continue to sustain damages, including, but not limited to, further delay in pursuing legal remedies with respect to their claims, costs related to various satellite litigation necessitated by such fraud, potential compromise of their underlying claims, consequential damages caused by SUBRAMANIAN's inability to conduct other business and other incidental damages.

142. The actual damages are in an amount in excess of \$75,000, and to be determined at trial.

**SIXTH CAUSE OF ACTION
(INSURANCE “BAD FAITH”)
(BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING)**

143. Vedatech Parties reallege all of the allegations of paragraphs 1-142 above.

The insurance agreements

144. The contractual agreements between ST.PAUL and Vedatech Parties are detailed in the counterclaims (Fourth Amended Cross-Complaint) of the ST.PAUL-Case currently pending as C-04-01818.

Bad Faith Acts by ST.PAUL

145. Some of the bad faith actions of ST.PAUL are detailed in para.153 below under the section for “Unfair Competition”. A sample is reproduced below:

- a. Contrary to their fiduciary-like duties, planning to breach such duties under the cloak of the mediation in order to “cut a deal” with QAD outside the sunshine of normal open settlement offers for insurance claims and responses;
- b. Mixing coverage concerns, nay, permitting coverage concerns to dominate and be the sole concern in dealing with settlement and mediation issues;
- c. Withholding reimbursement for defense costs already incurred based on past promises of ST.PAUL regarding their commitment at least regarding partial payments in limited areas, suddenly after the purported “settlement” with QAD;
- d. Permitting Mr. Greenan, Mr. Wang and their law firm to viciously attack Vedatech Parties (the insureds) in the coverage litigation and bringing meritless *ex parte* motion after *ex parte* motion in State Court with respect to the coverage litigation, mostly in violation of State Court procedural rules and thus compromising the preparation and work that insureds could put into defending

the QAD-Case; Harassing Plaintiffs with meritless “contempt of court” motions or inserting unwarranted “contempt of court” provisions in proposed orders etc.

- e. Failure to present any settlement “offer” from QAD to Vedatech Parties (even if made under the excuse of “mediation”) to see if Vedatech Parties were willing to continue defense without any help from ST.PAUL and see whether Vedatech Parties were willing to waive any excess liability for judgments that may exceed policy limits, especially when such a contingency (for excess Judgment) is non-existent;

Continuing Bad Faith Acts

146. Plaintiffs especially wish to emphasize the bad faith acts of ST.PAUL that have occurred since the answer in the original coverage action, viz. June 2002.

Proximate Harm and Damages

147. As a proximate result of such reliance upon the false promises of these Defendants, Vedatech Parties have sustained heavy damages, and continue to sustain damages, including, but not limited to, further delay in pursuing legal remedies with respect to their claims, costs related to various satellite litigation necessitated by such fraud, potential compromise of their underlying claims, consequential damages caused by SUBRAMANIAN’s inability to conduct other business and other incidental damages.

148. The actual damages are in an amount in excess of \$75,000, and to be determined at trial.

Exemplary and Punitive Damages

149. The acts and conduct of these Defendants were, and continue to be oppressive, fraudulent, and malicious. Defendants knew or should have known, (and, in addition, know or should know) that their conduct would harm Vedatech Parties.

150. Defendants' actions were, and continue to be undertaken for the specific purpose of enriching themselves at the expense of Vedatech Parties. Vedatech Parties therefore seek, and are entitled to recover, punitive and exemplary damages in the amount to be determined at trial.

SEVENTH CAUSE OF ACTION (UNFAIR COMPETITION)

(CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200 et. seq.)

151. Vedatech Parties reallege all of the allegations or paragraphs 1-150 above.

Pattern of behavior

152. From information and belief, Defendants have engaged in a pattern of behavior that is unlawful, unfair or fraudulent, including (in addition to all of the allegations in the Complaint set out above):

ST.PAUL

Fraudulent Behavior

- a. Fraudulently inducing Plaintiffs to "consent" to an order by the Court on January 13, 2004 (and inducing Plaintiffs not to oppose in full, subsequent orders) with respect to a mediation with premeditated plans for using the cloak of secrecy provided by mediation, so that they could, with the help of WULFF, and QAD, make collusive arrangements with QAD that would be harmful to their insureds;
- b. Fraudulently and coercively forcing Plaintiffs into such a mediation;
- c. Failure to disclose the detailed nature of ST.PAUL's (and their attorneys') prior relationship and dealings with WULFF to insureds, both before the January 13, 2004 hearing / order, and through the end of the mediation and afterwards;
- d. Other fraudulent behavior as detailed above;

Abuse of Process

- e. Inserting items such as “contempt of court” etc in Court orders even though the Court did not make such orders;
- f. Inserting various other provisions into proposed orders where the Court did not make such orders or made contrary orders;
- g. Harassing insureds by bringing improper “contempt of court” applications for trivial and disproportionate normal discovery issues and that too without notice and at ex parte hearings, with such documents being served literally seconds before the parties enter the chambers;

Insurance Bad Faith and Conspiracy to Harm Plaintiffs

- h. Compromising the defense of the QAD-Case by their vicious attacks on their own insureds;
- i. Failure to terminate the mediation when Vedatech Parties terminated it at or around 4:00 PM on March 12, 2004;
- j. Failure to separate coverage issues from settlement issues before and after the mediation;
- k. Failure to have a separation of duties and responsibilities between the coverage attorneys and the insurance adjuster so that the settlement discussions are not tainted with coverage concerns;
- l. Failure to inform or update insureds of secret negotiations undertaken with QAD and WULFF even after the mediation was terminated by SUBRAMANIAN;
- m. Failure to present any settlement “offer” from QAD to Vedatech Parties to see if they were willing to continue defense without any help from ST.PAUL and see whether Vedatech Parties were willing to waive any excess liability for judgments that may exceed policy limits;

- n. Continuing with the mediation between QAD and ST.PAUL even after mediation was terminated by SUBRAMANIAN;
- o. Conspiring with QAD and others to weaken Plaintiffs' legal representation with respect to the coverage litigation and concurrently getting released from their risk of bad faith behavior with respect to inadequate responses to their duties to defend;
- p. Asking WULFF to act as an advocate for ST.PAUL and QAD while sacrificing the interests of SUBRAMANIAN and VEDATECH;
- q. Withholding even the partial skimpy payments for past defense costs and fees already incurred (even for dates before March 15, 2004);
- r. Refusal to provide even this skimpy limited and partial reimbursement of defense costs for defense activities after the purported "settlement" of March 15, 2004;
- s. Making false statements in Court pleadings and letters to the Court in the insurance coverage litigation;
- t. Refusing to make any arrangements for advance payments in the QAD-Case and compromising the defense and discovery activities;
- u. Other fraudulent, unfair, and unlawful activities as detailed above;

WULFF

- v. Non-disclosure of relationship with ST.PAUL and their attorneys (including Mr Greenan and his law firm) to Vedatech Parties;
- w. Non-disclosure regarding past insurance related three-party mediation (such as between insurer, insured and plaintiffs in underlying litigation triggering insurance);
- x. Using Unfair and Unlawful activities during the mediation to favor one set of parties over the weaker, smaller party (the insured in this case);

- y. Falsely presenting himself as a neutral while at the same time favoring large clients such as ST.PAUL and QAD to the detriment of small businesses and one-time clients;
- z. Permitting the fact that ST.PAUL and QAD agreed to reimburse mediation fees affect neutrality;
- aa. Adopting coercive tactics such as using ST.PAUL and QAD to obtain Court orders compelling Vedatech Parties to undertake various activities, all in relation to his own mediation while confessing that he himself had no such coercive authority;
- bb. Misrepresenting the results of conflicts check and using small print for escape clauses buried in an addendum to the main form contracts. Using such hidden disclaimers to shift the burden of disclosure on voluntary acts of counsel;
- cc. Misrepresenting the effect of the separate document of “conflicts check” as solely dealing with former clients of former law firm, while suppressing the vital information about non-disclosure of prior business relationship with other parties to the mediation and their attorneys;
- dd. Using duress and coercive tactics to force Vedatech Parties to sign an agreement they did not want to sign;
- ee. Continuing with the mediation after SUBRAMANIAN terminated it around 4:00 PM on March 12, 2004 in spite of knowing about the various conflicts and specifically in light of SUBRAMANIAN’s pre-mediation query about the legality. Undertaking such activities in spite of opining to SUBRAMANIAN before the mediation started that this was an unsettled area of law. A mediator presenting himself as a neutral should not continue conflicting duties if there was even a hint of potential illegality;
- ff. Unlawfully conspiring with ST.PAUL and QAD in the above activities;
- gg. Other fraudulent and unlawful activities as detailed above;

QAD

- hh. Unlawfully conspiring with ST.PAUL and WULFF in the above activities;
- ii. Conspiring to unlawfully, fraudulently and unfairly benefiting to the tune of \$500,000 with such monies coming out of the insurance benefits of Vedatech Parties;
- jj. Hiding the true nature of QAD Japan K.K. and QAD Japan Inc. in its SEC filings;
- kk. Refusing to provide CGL policies covering relevant periods in spite of repeated requests for the same, while at the same time engaging in secret collusive deals with the insurer of Vedatech Parties;
- ll. Refusing to provide timely information on insurance coverage for SUBRAMANIAN under QAD Inc.'s policies;
- mm. After the mediation, cooperating with ST.PAUL in furtherance of ST.PAUL's insurance bad faith activities.

ST.PAUL, WULFF and QAD

- nn. Other fraudulent, unfair and unlawful activities as detailed in the Complaint and to be proven at trial;

153. Defendants' behavior, and pattern of behavior, including the unlawful, unfair and fraudulent acts alleged above constitute a violation of the Unfair Competition Laws of California, as set out in the California Business and Professions Code §§ 17200 et seq.

(CONSPIRACY REGARDING UNFAIR COMPETITION)

154. Plaintiffs reallege the allegations of paragraphs 1-155 above.

155. The various defendants acted in collusion with each other (as detailed above), and with the common purpose of engaging in and with prior knowledge of the unfair, unlawful and fraudulent business practices alleged herein and profiting from the same at the

1 expense of Vedatech Parties. Defendants are jointly and severally liable for their conduct
2 and for the conduct of each other.

3 **RESTITUTION /DISGORGEMENT OF PROFITS**

4 156. ST.PAUL is enriched by withholding defense costs and benefits to Vedatech
5 Parties. It is further enriched by its other bad faith activities described herein at the expense
6 of Vedatech. ST.PAUL is liable to disgorge all such benefits that are due to the Vedatech
7 Parties under the California Unfair Competition laws.

8 157. QAD is enriched by gaining the right to receive (or by actually receiving)
9 \$500,000 from ST.PAUL from funds that are held in trust for the Vedatech Parties. QAD is
10 also liable to Vedatech Parties for all of the amounts that ST.PAUL or WULFF are liable, on
11 the basis of their participation in the conspiracies as alleged herein.

12 158. WULFF is liable to Vedatech Parties for all of the amounts that ST.PAUL or
13 QAD are liable, on the basis of his participation in the conspiracies as alleged herein.

14 159. Defendants are also liable for any and all other remedies available to Vedatech
15 Parties under the California Business and Professions Code §§ 17200 et seq.

16 160. The actual amounts in restitution /disgorgement of profits and other damages
17 prayed for herein are in an amount in excess of \$75,000, and to be determined at trial.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiffs respectfully pray for judgment against Defendants as follows:

- 21 (1) Declaratory and injunctive relief as sought herein or as deemed appropriate by the
22 Court;
23 (2) damages be awarded as sought herein;
24 (3) for consequential and economic losses in an amount to be proven at trial;
25 (4) restitution be provided for the unlawful profits made by Plaintiffs;
26

27 Page 47 of 49

28 **First Amended Complaint of**

Plaintiffs Vedatech Inc., Vedatech K.K. and Mani Subramanian against defendants
St.Paul Fire and Marine Insurance, USF&G, QAD Inc., QAD Japan K.K. and Randall Wulff

- (5) for interest on such amounts;
- (6) for general damages to compensate Plaintiffs for their lost business opportunities, goodwill, and other losses in an amount to be proven at trial;
- (7) for punitive damages;
- (8) for attorney's fees and for costs of suit;
- (9) for equitable relief stripping defendants of their unjust enrichment;
- (10) for appropriate injunctions preventing defendants from continuing their unlawful, and/or unfair and/or fraudulent activities; *and*
- (11) for such and any other relief as the Court deems proper.

Respectfully submitted on behalf of Plaintiffs VEDATECH INC., VEDATECH K.K. and MANI SUBRAMANIAN.

Dated: June 15, 2004

LAW OFFICES OF JAMES S. KNOFF

By //s//
CHRISTINA GONZAGA
ATTORNEY FOR PLAINTIFFS
VEDATECH INC., *and*
VEDATECH K.K.

Dated: June 15, 2004

MANI SUBRAMANIAN (pro per)

By //s//
MANI SUBRAMANIAN (pro per)

Next Page: Demand for Jury Trial

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiffs VEDATECH K.K. and MANI SUBRAMANIAN request a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues triable of right by a jury.

Dated: June 15, 2004

LAW OFFICES OF JAMES S. KNOFF

By //s//
CHRISTINA GONZAGA
ATTORNEY FOR PLAINTIFFS
VEDATECH INC., and
VEDATECH K.K.

Dated: June 15, 2004

MANI SUBRAMANIAN (pro per)

By //s//
MANI SUBRAMANIAN (pro per)

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EXHIBIT C -
QAD Request for Judicial Notice

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): MANI SUBRAMANIAN 228 Hamilton Avenue, 3F Palo Alto, CA 94301		TELEPHONE NO.: 1-650-798-5288	FOR COURT USE ONLY ENDORSED 2006 MAY 26 AM 11:02 CLERK OF THE SUPERIOR COURT COUNTY OF SANTA CLARA, CALIFORNIA BY: _____ DEPUTY CLERK
ATTORNEY FOR (Name): pro se party			
Insert name of court and name of judicial district and branch court, if any: SUPERIOR COURT for the COUNTY OF SANTA CLARA 191 North First Street, San Jose, California			
PLAINTIFF/PETITIONER: Mani Subramanian			
DEFENDANT/RESPONDENT: QAD Inc., et al.			
REQUEST FOR DISMISSAL <input type="checkbox"/> Personal Injury, Property Damage, or Wrongful Death <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other <input type="checkbox"/> Family Law <input type="checkbox"/> Eminent Domain <input checked="" type="checkbox"/> Other (specify): Fraud, Unfair Competition, etc.		CASE NUMBER: 1-98-cv-771638 (and 1-99cv784685)	Clark Sakai

— A conformed copy will not be returned by the clerk unless a method of return is provided with the document. —

1. TO THE CLERK: Please dismiss this action as follows:

a. (1) ☐ With prejudice (2) ☒ Without prejudice

b. (1) ☒ Complaint (2) ☐ Petition

(3) ☐ Cross-complaint filed by (name):

(4) ☐ Cross-complaint filed by (name):

(5) ☐ Entire action of all parties and all causes of action

(6) ☒ Other (specify):* All causes of action against QAD Japan Inc., John Doordan, and Arthur Andersen LLP and all remaining causes of action and parties other than those *already* dismissed or relieved by the Court

Date: May 26, 2006

BY FAX

MANI SUBRAMANIAN (party without attorney)

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☒ PARTY WITHOUT ATTORNEY)

* If dismissal requested is of specified parties only, of specified causes of action only, or of specified cross-complaints only, so state and identify the parties, causes of action, or cross-complaints to be dismissed.



(SIGNATURE)

Attorney or party without attorney for:

☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

2. TO THE CLERK: Consent to the above dismissal is hereby given.**

Date: May 26, 2006

MANI SUBRAMANIAN (party without attorney)

(TYPE OR PRINT NAME OF ☐ ATTORNEY ☒ PARTY WITHOUT ATTORNEY)

** If a cross-complaint—or Response (Family Law) seeking affirmative relief—is on file, the attorney for cross-complainant (respondent) must sign this consent if required by Code of Civil Procedure section 681(f) or (g).



(SIGNATURE)

Attorney or party without attorney for:

☒ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Cross-complainant

(To be completed by clerk)

MAY 26 2006

3. ☒ Dismissal entered as requested on (date):

4. ☐ Dismissal entered on (date): as to only (name):

5. ☐ Dismissal not entered as requested for the following reasons (specify):

6. ☒ a. Attorney or party without attorney notified on (date):

b. Attorney or party without attorney not notified. Filing party failed to provide

☐ a copy to conform ☐ means to return conformed copy

MAY 26 2006

Clark Sakai

MAY 26 2006

KIRI TORRE

CHIEF EXECUTIVE OFFICER/CLERK Deputy

Date:

Clerk, by

Form Adopted by the
Judicial Council of California
882(e)(5) (Rev. January 1, 1997)

REQUEST FOR DISMISSAL

Code of Civil Procedure, § 681 et seq.
Cal. Rules of Court, rules 883, 1233

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EXHIBIT D -
QAD Request for Judicial Notice

WILLIAM D. CONNELL, State Bar No. 089124
SALLIE KIM, State Bar No. 142781
GCA LAW PARTNERS LLP
1891 Landings Drive
Mountain View, CA 94043
(650) 428-3900
(650) 428-3901 [fax]
Attorneys for QAD Inc., QAD Japan K.K., QAD Japan Inc.,
John Doordan, and Lai Foon Lee

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

QAD INC., a Delaware corporation, et al.

Plaintiffs,

vs.

MANI SUBRAMANIAN, an individual, et
al.

Defendants.

No. 1-98-CV-771638 [Lead Case]

VEDATECH K.K., et al.

Plaintiffs,

vs.

QAD INC., et al.,

Defendants.

No. 1-99-CV-784685 [Consolidated Case]

Trial Date: June 12, 2006

AND RELATED CROSS-ACTION.

~~[Proposed]~~
JUDGMENT BY COURT UNDER C.C.P. 437c

[Proposed] JUDGMENT BY COURT UNDER
CCP 437c

1 This Court, having on May 12, 2006, granted the Motion for Summary Judgment by
2 Defendant [in Case No. 1-99-CV-784685] LAI FOON LEE, as set forth in Exhibit A
3 hereto, and having ordered entry of judgment as requested in said motion,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

5 Plaintiffs shall take nothing as against Defendant LAI FOON LEE, and
6 that judgment is entered in favor of said Defendant.

7
8 DATED: May 23 2006

9
10 GREGORY H. WARD

11 Judge of the Superior Court
12
13

14 APPROVED AS TO FORM:
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16

17 Plaintiff [in Case No. 1-99-cv-784685]

18 MANI SUBRAMANIAN, pro se
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(ENDORSED)
FILED
MAY 12 2006
KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

QAD, INC., et al.,

Plaintiffs,

v.

MANI SUBRAMANIAN, et al.,

Defendants

Case No.: 1-98-CV-771638

ORDER

Defendant Lai Foon Lee's motion for summary judgment or, in the alternative, for summary adjudication came on for hearing on May 11, 2006, at 9:00 a.m. in Department 9. The matter having been submitted, the court makes the following order:

Plaintiff's request for judicial notice is GRANTED. Defendant's request that the court take judicial notice of the First Amended Complaint filed September 29, 1999, is GRANTED. Defendant's request that the court take judicial notice of all pleadings filed in this case is DENIED.

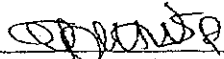
The Court declines to render formal evidentiary rulings, but has disregarded all incompetent and inadmissible evidence in ruling upon this motion. See Biljac Associates v. First Interstate Bank (1990) 218 Cal.App.3d 1410, 1419-1420. The documents attached as Exhibit A to the Opposition have been considered in evaluating plaintiff's request for a continuance.

Plaintiff's request for a continuance is DENIED.

EXHIBIT A

1 Defendant Lai Foon Lee's motion for summary judgment is GRANTED. Defendant met
2 her burden of showing that plaintiff cannot establish all of the elements of each cause of action,
3 that her actions were privileged and that the Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh
4 causes of action are barred by the applicable statutes of limitations. Plaintiff has not raised a
5 triable issue of fact in this regard.

6
7 Dated: May 12, 2006

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9 _____
10 Gregory H. Ward
11 Judge of the Superior Court
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EXHIBIT E -
QAD Request for Judicial Notice



Not Reported in F.Supp.2d
 Not Reported in F.Supp.2d, 2005 WL 1513130 (N.D.Cal.)
 (Cite as: **2005 WL 1513130 (N.D.Cal.)**)

Page 1

Only the Westlaw citation is currently available.

N.D. California.
 VEDATECH, INC, Vedatech KK, Mani
 Subramanian (an individual), Plaintiffs,
 v.
 ST PAUL FIRE & MARINE INSURANCE CO, Qad
 Inc, Qad Japan KK, Randall Wulff (an
 individual), Defendants.
**No. C 04-1249 VRW, 04-1818 VRW, 04-1403
 VRW.**
United States District Court.

June 22, 2005.

[Christina M. Gonzaga](#), Law Offices of James S.
 Knopf, San Mateo, CA, for Plaintiffs.

Mani Subramanian, Palo Alto, CA, pro se.

[Enoch Wang](#), [John Phillip Makin](#), [Nelson Hsieh](#),
[James Steven Greenan](#), Greenan, Peffer, Sallander &
 Lally, San Ramon, CA, [William D. Connell](#), General
 Counsel Associates, LLP, Mountain View, CA,
[Douglas R. Young](#), [Roderick M. Thompson](#), Farella,
 Braun & Martel, LLP, San Francisco, CA, for
 Defendants.

ORDER

WALKER, Chief J.

*1 Mani Subramanian (Subramanian) owns Vedatech, Inc and Vedatech KK (collectively "Vedatech") and appears in the cases at bar in *propria persona*. Subramanian and Vedatech have brought suit against defendant QAD Inc (QAD) which moves in No 04-1249 to dismiss Subramanian's and Vedatech's first amended complaint (FAC) pursuant to [FRCP 12\(b\)\(6\)](#) and [41\(e\)](#). Doc # 44. Next, defendant QAD Japan K K (QADKK) also moves in 04-1249 to dismiss the FAC pursuant to [FRCP 12\(b\)\(5\)](#) and [\(b\)\(6\)](#). Id. Defendant Randall Wulff (Wulff) moves in 04-1249 the court to dismiss the FAC pursuant to [FRCP 12\(b\)\(6\)](#) and [41\(e\)](#). Doc # 52. Next, defendant St Paul Fire & Marine Insurance Company (St Paul) moves in 04-1249 to dismiss the FAC pursuant to [FRCP 12\(b\)\(6\)](#). Doc # 45. Additionally, all defendants seek sanctions pursuant to [FRCP 11 or 28 USC § 1927](#). (04-1249 Docs 86, 97, 106). Subramanian and Vedatech seek

sanctions pursuant to [FRCP 11](#) against Wulff. (04-1249 Doc # 61). Finally, St Paul seeks to remand Nos 04-1403 and 04-1818 to Santa Clara superior court. (C-04- 1818 Docs 7, 19) (C-04-1403 Docs 11, 40).

I A

The First Action

On January 26, 1998, QAD and QADKK filed suit against plaintiffs Vedatech Inc and Vedatech KK (collectively "Vedatech") and Mani Subramanian ("Subramanian"), owner of all Vedatech entities, in the Santa Clara superior court (hereinafter, the "first action"). The first action arose out of contractual and tort disputes between QAD, QADKK, Vedatech and Subramanian regarding QAD's hiring (and firing) of Vedatech and Subramanian to develop computer software in Japan. The substance of the allegations in the first action need not be recited in depth. Suffice it to say, QAD's and QADKK's allegations were premised entirely on state law.

B

The Second Action

In September 1999, Vedatech and Subramanian filed their own action in the Santa Clara superior court against QAD, QADKK, Arthur Anderson LLP, Foon Lee and John Doordan alleging fourteen causes of action including, but not limited to, breach of contract, fraud, constructive fraud, negligent misrepresentation, trade libel and state unfair competition (hereinafter, the "second action"). Like the first action, all claims in the second action were premised entirely on state law. In the second action, Vedatech and Subramanian alleged that these defendants conspired to sabotage (and did sabotage) Vedatech and Subramanian's contractual performance of developing software for QAD and QADKK in Japan. QAD and QADKK filed a counterclaim in the second action essentially duplicating their affirmative allegations in the first action. The first and second actions were consolidated in late 2001 and assigned to Judge Jack Komar (hereinafter, the "consolidated action").

C

The Third Action

Between 1997 and 2000, St Paul issued Vedatech various policies of comprehensive general liability insurance. Accordingly, on January 14, 1999, Vedatech and Subramanian tendered to St Paul the

Not Reported in F.Supp.2d
 Not Reported in F.Supp.2d, 2005 WL 1513130 (N.D.Cal.)
 (Cite as: **2005 WL 1513130 (N.D.Cal.)**)

Page 2

defense of Vedatech and Subramanian in the first action. St Paul agreed, under a reservation of rights, to provide a defense for Vedatech and Subramanian in the first action (where they were defendants) on May 5, 1999. Moreover, the language of the insurance policy stated, in pertinent part, that "St Paul may, at [its] discretion, investigate any 'occurrence' and settle any claim or suit that may result." St Paul explicitly declined to defend Vedatech and Subramanian regarding the cross-claims filed by QAD and QADKK in the second action.

***2** After almost five years of defending Vedatech and Subramanian in the first action, it became clear to St Paul that the events giving rise to the first action occurred entirely in Japan. St Paul's insurance policy with Vedatech and Subramanian, however, provided only domestic coverage. Unsurprisingly, a dispute arose between Vedatech and Subramanian and St Paul regarding liability coverage and indemnity issues under the insurance agreement. Based upon these disputes, on February 8, 2002, St Paul filed an action for declaratory relief (hereinafter, the "third action") in the Santa Clara superior court against Vedatech and Subramanian seeking a judicial determination regarding the scope of St Paul's duty to defend and indemnify Vedatech and Subramanian in the *entire* consolidated action. Vedatech and Subramanian then began asserting that St Paul's duty to defend extended to the second action as well.

Not to be outdone, Vedatech and Subramanian filed a counterclaim against St Paul alleging a pattern of unfair competition in denying benefits, breach of contract and bad faith. Also in the counterclaim, Vedatech and Subramanian asserted, for the first time, that St Paul had a duty to fund the *prosecution* of Vedatech and Subramanian's affirmative claims in the second action. On June 26, 2002, Subramanian individually removed the third action to this court on the basis of diversity jurisdiction. On October 21, 2002, however, Judge Fogel remanded the third action pursuant to [28 USC § 1446](#) because Vedatech had not joined Subramanian in the petition for removal. See C-02-3061, Doc # 31 (Remand Order). This brief stint in Judge Fogel's court was only the first time, but far from the last, that these parties would darken this court's doors.

D

Court-Ordered Mediation of Consolidated Action

In the meantime, Judge Komar set the consolidated action for trial on May 3, 2004, in state court. While Subramanian appeared *pro se*, Vedatech was represented at all times by counsel, namely Christina

Gonzaga (Gonzaga) of the Law Office of James S Knopf. On January 13, 2004, Judge Komar *verbally ordered* all parties to the consolidated action (including St Paul as Vedatech's insurer) to attend mediation before Wulff, a private mediator. C 04-1249 VRW, Doc # 87, Ex F at 17:13-14 (transcript) (Judge Komar stated: "Right now, I'm *ordering* you [Vedatech and Subramanian] to go to mediation") (emphasis added). Judge Komar chose Wulff based upon St Paul's representation that Wulff was a very skilled mediator whom St Paul had previously worked with on other mediation proceedings. On March 4, 2004, Judge Komar, *in writing*, ordered all parties to attend the Wulff mediation on March 12, 2004. Id, Ex H (Med Order).

On March 12, 2004, the mediation was held before Wulff with all parties attending. At the mediation, all parties were required to sign a confidentiality agreement that provided, in pertinent part, that "all parties agree that the mediator * * * ha[s] no liability for any act or omission in connection with the mediation." Doc # 54, Ex A (Conf Agreement). Subramanian signed the confidentiality agreement on his own behalf and Gonzaga (as well as James Knopf) signed the agreement on behalf of Vedatech. Id. Although Subramanian altered the wording of portions of the document, those changes did not alter the relevant language quoted above.

***3** The mediation commenced at 9:30 am and continued until 4:00 pm when Subramanian and Vedatech's attorneys abruptly left the mediation. But St Paul (as Vedatech's insurer), QAD and QADKK elected to continue the mediation and eventually reached a settlement of the consolidated action (the "settlement agreement"). Under this agreement, QAD and QADKK agreed to release and dismiss, with prejudice, the entire first action (as well as all counterclaims asserted by QAD and QADKK in the second action). Doc # 46, Ex A (Sett Agreement). In consideration of this dismissal, St Paul agreed to pay QAD and QADKK the sum of \$500,000. Id at 3. This agreement was signed and executed by QAD, QADKK and St Paul on March 25, 2004. Id at 6-7. Moreover, the settlement agreement specifically provided that Vedatech and Subramanian could continue to litigate their affirmative claims against QAD and QADKK in the second action. Id. Whether St Paul was contractually obligated to fund such prosecution was, of course, a hotly contested issue in the third action.

E

The Fourth Action

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To say that Vedatech and Subramanian were unhappy with the settlement agreement would be an understatement. Specifically, they were unhappy with the settlement agreement to the extent it apparently relieved St Paul from its duty (a duty St Paul vigorously disputes in the third action) of having to prosecute Vedatech's and Subramanian's affirmative claims in the second action. Vedatech and Subramanian turned their anger into action and on March 30, 2004, they filed a lawsuit, in federal court, alleging seven causes of action against St Paul, QAD, QADKK, Wulff and 50 "Doe" defendants (hereinafter, the "fourth action"). This action, based on diversity jurisdiction, was assigned to the undersigned. C 04-1249 VRW Doc # 1. Vedatech and Subramanian filed their first amended complaint on June 15, 2004. Doc # 36 (FAC). The FAC is currently the operative complaint in the fourth action.

The seven "causes of action" pled in the FAC include: (1) declaratory judgment, (2) injunctive relief, (3) fraud, (4) constructive fraud, (5) negligent misrepresentation, (6) insurance bad faith and (7) unfair competition. The sum and substance of Vedatech and Subramanian's 49-page (sometimes unintelligible) FAC appears to be that St Paul, QAD, QADKK, Wulff and 50 unknown defendants covertly conspired and colluded to get Vedatech and Subramanian to "consent" to mediate the consolidated action. Doc # 36 at 19 (stating that Vedatech and Subramanian were "tricked into 'consenting' to mediation before Wulff"). Once this fraudulent plan came to fruition and the mediation took place, the defendants further conspired in an effort to settle the consolidated action on terms that were not in Vedatech and Subramanian's best interests. Id at 9 (stating that St Paul "formulated a strategy for using the secrecy of mediation as a cover for engaging in collusive and bad faith negotiations with QAD * * * and Wulff"). As discussed above, the settlement agreement was not "favorable," according to Vedatech and Subramanian, because it "weaken[ed] Vedatech's [and Subramanian's] legal representation for the affirmative claims" involved in the second action. Id at 19. The FAC was signed by Subramanian, on his own behalf, and Gonzaga, as counsel for Vedatech. All defendants, save the unknown "Doe" defendants, have separately moved for dismissal of the FAC on various grounds. These dispositive motions are currently before the court.

F

The Removal Rampage

*4 Vedatech and Subramanian's anger did not end with the filing of the fourth action in federal court:

The settlement agreement sent Vedatech and Subramanian on what can only be described as a removal rampage. As described in depth below, from March 15, 2004, to May 6, 2004, Vedatech and Subramanian filed *four* petitions for removal in this court; two petitions involved the consolidated action (the action subject to the settlement agreement) and two petitions involved the third action.

1

Removal # 1

On March 15, 2004, before St Paul and QAD had finalized the settlement agreement, Vedatech and Subramanian removed the consolidated action to this court. The removal petition was assigned to Judge Hamilton. C-04-1035 PJH. Vedatech and Subramanian purportedly removed the consolidated action pursuant to [28 USC § 1446\(b\)](#), asserting that federal question jurisdiction had arisen on March 10, 2004. In support of the removal, they offered an interrogatory response from QAD and QADKK in which QAD claimed that it reserved all of its rights, including copyrights, in the software that Vedatech and Subramanian had created in Japan. According to Vedatech and Subramanian, this interrogatory response revealed that the basis for QAD's state law claims in the consolidated action was, in actuality, the Copyright Act, [17 USC § § 101](#) et seq. Since the consolidated action, according to Vedatech and Subramanian, would now require an interpretation of the federal Copyright Act, the consolidated action was removable pursuant to [28 USC § 1446\(b\)](#).

2

Removal # 2

Additionally, on April 12, 2004, Vedatech and Subramanian removed the third action to this court pursuant to [28 USC § 1446\(b\)](#). This removal petition, which contained nine exhibits and totaled hundreds of pages, was assigned to Judge Conti. C 04-1403 SC. Vedatech and Subramanian's "removal logic" goes as follows: For St Paul to prevail in the third action (the insurance declaratory relief action), St Paul would be required to "litigate the issues in the underlying cases [i e, consolidated action]," which, as asserted by Vedatech and Subramanian, were now removable pursuant to [28 USC § 1446\(b\)](#). Thus, according to Vedatech and Subramanian, because the consolidated action now raised a federal question (i e, application of the Copyright Act) and because St Paul would necessarily have to litigate this federal question to prevail in the third action, the third action itself was now removable.

3

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Remand # 1

On April 29, 2004, Judge Hamilton remanded the consolidated action finding: (1) the consolidated action raised no federal question and thus the court lacked subject matter jurisdiction and (2) even if subject matter jurisdiction existed, the removal was untimely. C 04-1035, Doc # 43 (Remand Order). Vedatech and Subramanian appealed Judge Hamilton's April 29, 2004, remand order to the United States Court of Appeals for the Ninth Circuit. C-04-1305, Doc # 48 (Not App). On August 16, 2004, the Ninth Circuit dismissed Vedatech and Subramanian's appeal pursuant to [28 USC § 1447\(d\)](#).

4

Removal # 3 and Remand # 2

*5 Not content to wait for the Ninth Circuit, Vedatech and Subramanian on May 6, 2004, filed a new petition for removal of the consolidated action pursuant to [28 USC § 1446\(b\)](#). This new petition was 63 pages long and contained 146 paragraphs purporting to demonstrate that Judge Hamilton had clearly erred in remanding the consolidated action and again argued that federal jurisdiction existed in the consolidated case pursuant to [28 USC § 1446\(b\)](#). The new removal petition was assigned to Judge Ware. Judge Hamilton, however, intervened on May 26, 2004, and related the second removal petition to the first petition. C-04-1806 PJH, Doc # 15 (Related Case Order). QAD and QADKK filed yet another motion to remand, Doc # 16, and Vedatech and Subramanian immediately sought to have Judge Hamilton *recused* from adjudicating the motion to remand. Judge Hamilton denied the recusal motion and again heard oral arguments on the motion to remand the consolidated case. On July 16, 2004, Judge Hamilton remanded the consolidated action for the second time. In her order, Judge Hamilton stated: "As was true when this same action was [first] removed * * *, the present notice of removal does not establish the existence of a federal question." Doc # 45 (Remand Order). Moreover, Judge Hamilton stated that "should the removing parties remove this action yet another time, the court will invite the QAD parties * * * to file a motion for sanctions under [\[FRCP\] 11](#)." *Id.*

Vedatech and Subramanian appealed Judge Hamilton's second remand of the consolidated case to the Ninth Circuit. Doc # 47. The Ninth Circuit, however, dismissed this appeal on August 16, 2004, citing [28 USC § 1447\(d\)](#). Astonishingly, on August 30, 2004, Vedatech and Subramanian filed a petition for rehearing en banc of the Ninth Circuit's August 16, 2004, order dismissing their appeal of both of

Judge Hamilton's remand orders. On February 16, 2005, the petition for rehearing en banc was denied and on February 23, 2005, Vedatech and Subramanian filed a motion to stay the Ninth Circuit's mandate. As of the date of this order, the motion to stay is still pending before the Ninth Circuit. The court will not speculate whether Vedatech and Subramanian intend to petition the Ninth Circuit's order to the United States Supreme Court for certiorari.

5

Removal # 4

Falling further down the rabbit hole, on May 7, 2004, Vedatech and Subramanian filed a second petition for removal in the third action, which, as described above, had *already been removed* and assigned to Judge Conti for remand determination. C-04-1403 SC. What is more, Judge Conti had not yet remanded the third action to state court; St Paul's motion to remand was still pending before Judge Conti. The second petition for removal of the third action was assigned to Judge Fogel. C-04-1818 JF. The second petition for removal of the third action was signed by Subramanian and Gonzaga.

E

Present Status of Litigation

*6 In an attempt to corral this removal beast, on July 2, 2004, the undersigned related the fourth action (04-1249 VRW) and *both* of Vedatech and Subramanian's petitions for removal of the third action (04-1403 VRW and 04-1818 VRW). The court has received St Paul's motion to remand, Vedatech and Subramanian's opposition and St Paul's reply. C-04-1403, Docs 11, 25, 30. Accordingly, the issue whether to remand the third action has been fully briefed, is currently before the court and is ripe for adjudication.

In the meantime, Vedatech and Subramanian filed a motion to impose sanctions pursuant to [Rule 11](#) against Wulff in the fourth action. Doc # 61. Wulff opposes this motion. Doc # 63. This motion is also before the court.

On September 16, 2004, the court heard oral arguments regarding (1) the three motions to dismiss the FAC, (2) St Paul's motion to remand the third action and (3) Vedatech and Subramanian's motion for [Rule 11](#) sanctions against Wulff. Doc # 83. At oral argument, the court invited St Paul, QAD, QADKK and Wulff to file motions for sanctions pursuant to [28 USC § 1927](#) and [Rule 11](#) against Vedatech and Subramanian. *Id.* All three have since

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filed such motions. It is also worth noting that less than one month after the hearing, on October 9, 2004, Gonzaga filed a motion to withdraw as Vedatech's attorney. (04-1249 Doc # 90) (04-1403 Doc # 47) (04-1818 Doc # 27). The court denied this request on October 15, 2004. (02-1249 Doc # 95) (04-1403 Doc # 47) (04-1818 Doc # 27). On March 16, 2005, Gonzaga (having apparently left the Law Offices of James Knopf) and Knopf himself filed a second motion to withdraw as Vedatech's attorney. (02-1249 Doc # 148) (04-1403 Doc # 70) (04-1818 Doc # 51). This second motion is currently pending.

Accordingly, for the sake of clarity, the court will summarize the motions that are currently pending before this court. First, St Paul moves this court to remand the third action to state court. (04-1403 Docs 11, 40) (04-1818 Docs 7, 19). Second, QAD, QADKK, St Paul and Wulff separately move to dismiss the FAC in the fourth action. (04-1249 Docs 44, 45, 52). Third, Vedatech and Subramanian request sanctions against Wulff pursuant to [FRCP 11](#). (04-1249 Doc # 61). Fourth, St Paul, QAD, QADKK and Wulff request sanctions pursuant to [FRCP 11](#) and costs and fees pursuant to [28 USC § 1927](#) against Vedatech and Subramanian. (04-1249 Docs 86, 97, 106) (St Paul 04-1403 Doc # 52) (St Paul 04- 1818 Doc # 32).

Gonzaga and Knopf move to withdraw as counsel of record for Vedatech. (04-1249 Doc # 148) (04-1403 Doc # 70) (04-1818 Doc # 51). Additionally, Gonzaga and Knopf have filed a motion to strike portions of Subramanian and Vedatech's opposition to their second motion to withdrawal. (04-1249 Doc # 154) (04-1403 Doc # 74) (04-1818 Doc # 55). Subramanian and Vedatech have filed a motion requesting additional oral argument. (04-1249 Doc # 112) (04-1403 Doc # 63) (04-1818 Doc # 43).

Taking a deep breath, the court proceeds to attempt to resolve these disputes.

II

Motion to Remand

*7 As discussed above, Vedatech and Subramanian's first petition for removal of the third action (a state declaratory relief action regarding insurance contracts) is based on one single piece of logic: "the removability of the underlying [consolidated action] attaches *mutatis mutandis* to the removability of the insurance case [third action]." C 04-1403, Doc # 6 (Rem Pet) at 5. Moreover, the second petition for removal states that "the [consolidated action] [is] completely preempted by [the Copyright Act]. This,

in turn, justifies removal of this derivative action [third action]." C 04- 1818, Doc # 1 (Rem Pet) at 5.

The court expresses no opinion regarding whether Vedatech and Subramanian's logic is correct. Assuming arguendo that this logic is correct, it is clear that the absence of a federal question in the consolidated action would render the third action unremovable. As mentioned above, this court (per Judge Hamilton) has not once, but *twice*, held that the consolidated action contains no federal question sufficient to confer removal jurisdiction pursuant to [28 USC § 1446\(b\)](#) and has *twice* remanded the consolidated action to state court. In fact, Subramanian and Vedatech have been threatened with sanctions by Judge Hamilton should they try again to remove the consolidated action to this court.

Accordingly, the question whether a federal question exists in the consolidated action has been answered in the negative by Judge Hamilton--*twice*. Under plaintiffs' own logic, because there is no federal question in the consolidated action, this court must remand the third action for lack of subject matter jurisdiction pursuant to [§ 1447\(c\)](#).

Moreover, even if Judge Hamilton's remands were in error (which clearly they were not) and even if the consolidated action between QAD, QADKK, Vedatech and Subramanian hinged entirely on the adjudication of the Copyright Act, this court would *still* lack subject matter jurisdiction over the third action.

As discussed above, the third action is an action for declaratory relief brought by St Paul. St Paul seeks a judicial determination whether it has a duty to defend Vedatech in the consolidated action if the events underlying the consolidated action occurred in Japan. This is a matter governed completely by California law. Under California law, "it has long been a fundamental rule of law that an insurer has a duty to defend an insured if [the insurer] becomes aware of, or if the third-party lawsuit pleads, facts giving rise to the potential for coverage under the insuring agreement." [Waller v. Truck Insurance Exchange, Inc.](#), 11 Cal.4th 1, 19, 44 Cal.Rptr.2d 370, 900 P.2d 619 (1995) (citing [Gray v. Zurich Insurance Co.](#), 65 Cal.2d 263, 276, 54 Cal.Rptr. 104, 419 P.2d 168 (1966)). Accordingly, whether St Paul is under a duty to defend Vedatech in the consolidated action is determined by comparing the facts alleged in the consolidated action complaint and the language of the insuring agreement between St Paul and Vedatech. Even if the underlying claims were federal copyright

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claims (which they are not), resolution of the third action would hinge on whether the insuring agreement's scope was broad enough to encompass federal copyright claims arising from events that occurred in Japan. This analysis in no way involves interpretation of the Copyright Act; it is simply a matter of state contract interpretation.

*8 Further, although Vedatech and Subramanian are diverse from St Paul, they cannot base their two petitions for removal on this fact; [28 USC 1446\(b\)](#) requires a defendant to file a petition for removal within thirty days of the point when diversity jurisdiction is established. Vedatech's and Subramanian's petitions were filed more than two years after St Paul initiated the third action in state court.

No federal question exists in the third action and thus Vedatech and Subramanian's removal pursuant to [28 USC § 1446\(b\)](#) was improper. Accordingly, St Paul's motion to remand 04-1403 and 04-1818 is GRANTED and the court REMANDS these cases to the Santa Clara superior court pursuant to [28 USC § 1447\(c\)](#).

St Paul requests that the court order Vedatech and Subramanian to pay St Paul's reasonable attorney fees and costs incurred in these motions to remand. [28 USC § 1447\(c\)](#) provides in relevant part: "An order remanding the case may require payment of just costs and any actual expenses, including attorney [] fees, incurred as a result of the removal." As this court stated in [Moore v. Kaiser Foundation Hospitals, Inc., 765 F.Supp. 1464, 1466 \(N.D.Cal.1991\)](#), aff'd [981 F.2d 443 \(9th Cir.1992\)](#):

As a matter of public policy, the party forced to bring a motion to remand an improperly removed case generally should be fully reimbursed for its costs in remanding the case whether the removal was in bad faith or otherwise. The court's award of fees in this case is not a punitive award against defendants; it is simply reimbursement to plaintiffs of wholly unnecessary litigation costs the defendants inflicted. Attorney fees spent to remand an improperly removed case without bad faith cost just as much as fees spent to remand a case removed in bad faith.

The court orders the remand of this case and, accordingly, finds that an award of reasonable attorney fees is appropriate. To determine a reasonable attorney fee award, the court employs the lodestar method, under which the court multiplies the number of hours the prevailing party reasonably

expended on the litigation by a reasonable hourly rate. [Yahoo!, Inc. v. Net Games, Inc., 329 F Supp 2d 1179, 1182 \(N.D.Cal.2004\)](#). "[T]o convert the data provided by fee applicants to a 'reasonable attorney fee,' the court first compares the requested number of hours to the number of hours that 'reasonably competent counsel' would have billed." [Id at 1188.](#)

St Paul requests 108.5 hours for services performed by attorneys in connection with (1) the preparation and filing of both motions to remand, (2) its reply to Vedatech's and Subramanian's opposition to its motions to remand and (3) preparation for the September 16, 2004, hearing. Doc # 98, Ex A. Having considered the nature of the complex legal questions created by Vedatech's and Subramanian's voluminous and repetitive removal petitions and memoranda, as well as the quality of the attorneys' work, the court finds the claim for 108.5 hours of attorney time to be reasonable in preparing and defending its motions to remand in these cases.

*9 The court now turns to determining a reasonable hourly rate. More than one methodology exists to make this determination. In [Laffey v. Northwest Airlines, Inc., 572 F.Supp. 354 \(D.D.C.1983\)](#), aff'd in part, rev'd in part on other grounds, [746 F.2d 4 \(D.C.Cir.1984\)](#) the court employed a variety of hourly billing rates to account for the various attorneys' different levels of experience. The *Laffey* methodology is useful when an unusually large fraction of either senior or junior attorney time is necessary, and spent, by counsel on behalf of a client. The *Laffey* methodology allows the court to reflect in the fee award the disproportion of the time spent by senior or junior attorneys at a rate commensurate with such attorneys' market hourly rate. Cf *In re HPL Technologies Inc, Securities Litigation*, 2005 U.S. Dist LEXIS 7244 (ND Cal 2005) (Walker, J). In this case, 13.3 hours were spent by James Greenan who claimed a billing rate of \$250/hour and 96 hours by Enoch Wang who claimed a \$185/hour billing rate. St Paul requests total fees of \$20,738.75. Doc # 162 at 2; Doc # 98, Ex A.

A "blended hourly rate" rather than the *Laffey* methodology would appear sufficient in this case to reflect the market rate for counsel's services. This is because "[t]he purpose of using prevailing market rates is to estimate the hourly rate reasonably competent counsel would charge[,] * * * [and] not to determine whether or not a specific attorney could command a specific hourly rate in the market." The court concludes, therefore, that "the average market rate in the local legal community as a whole is a

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better approximation of the hourly rate that would be charged by reasonably competent counsel than the actual billing rate charged by a single attorney." [Yahoo!](#), 329 F Supp 2d at 1185.

In several of the court's previous orders, the court has calculated an average market rate in the local legal community as a whole using public data from the United States Census Bureau and Bureau of Labor Statistics ("BLS"). See, e.g., [Yahoo!](#), 329 F Supp 2d 1179; [Allen v. BART](#), 2003 WL 23333580 (N.D.Cal.2003); [Gilliam v. Sonoma City](#), 2003 WL 23341211 (N.D.Cal.2003). In [Yahoo!](#), the court explained that:

The BLS provides data on the hourly wages earned by attorneys * * *. To estimate the hourly rates billed to clients, the court first calculated the ratio of net receipts to gross receipts from data compiled by the Census Bureau. This ratio was used to approximate the overhead costs that would be incorporated in the hourly rates billed to clients. The court then divided the BLS wage data (*w*) by the ratio of net receipts (*nr*) to gross receipts (*gr*) to determine an estimated average market rate (*r*) * * *.

Id at 1189.

This methodology is represented by the following equation: $r = w / (nr/gr)$. Stated another way, the average market rate $r = w * (gr/nr)$. The most recent census data describing gross and net receipts by law partnerships are located in "Statistical Abstract of the United States: 2004-2005" ("2004 Statistical Abstract"). See United States Census Bureau, *Statistical Abstract of the United States: 2004-2005*, tbl 718, available at <http://www.census.gov/statab/www/>. The 2004 Statistical Abstract provides gross and net receipts for the year 2001. For law partnerships, gross receipts totaled \$91 billion and net receipts totaled \$32 billion. This yields a ratio of net receipts to gross receipts of 0.351. Even though these data are four years old, it is adequate for present purposes because law firm economics should not vary significantly over such a short period.

*10 The most recent data available from the BLS describing hourly wages in the San Francisco area are located in "November 2003 Metropolitan Area Occupational Employment and Wage Estimates San Francisco, CA PMSA," available at http://www.bls.gov/oes/current/oes_7360.htm#b23-0000 ("2003 BLS Wage Estimates"). The BLS provides wage estimates for "Legal Occupations" in the year 2003. The BLS's estimates for lawyers are a

median hourly wage of \$65.01/hr and a mean hourly wage of \$70.23/hr. Id. As in [Yahoo!](#), the court selects the higher of the median or mean hourly wage because it is more favorable to the party seeking the grant of attorney fees. Id at 1191.

Dividing the most recent mean hourly wage for lawyers, \$70.23/hr, by the most recent ratio of net to gross receipts, 0.351, yields an estimate of \$200/hr (rounded down from \$200.08/hr) as the average market rate for lawyers in the San Francisco area. This, of course, is fairly close to the claimed hourly rate of St Paul's counsel. It should not be surprising that a large insurance company would not allow itself to be overcharged for attorney services and indeed it appears that St Paul has done just that. In any event, the court finds that a reasonable or market value attorney fee for the work of St Paul's counsel is: 108.5 hours at \$200/hr, yielding a total of \$21,700. Accordingly, \$20,738.75, the amount requested by St Paul, is a reasonable attorney fees award; indeed, it is actually almost \$1,000 less than the court's calculation of a market value fee. Given the unitary nature of both petitions for removal, Vedatech and Subramanian are jointly and severally liable for the full amount of St Paul's attorney fees. [Kona Enterprises, Inc. v. Estate of Bishop](#), 229 F.3d 877, 888-89 (9th Cir.2000); see also [Pekarsky v. Ariyoshi](#), 575 F.Supp. 673, 676-77 (D.Hawaii 1983) (Schwarzer, J).

Finally, the court turns to St Paul's motion for sanctions pursuant to [FRCP 11\(c\)\(1\)\(A\)](#). This is an appropriate instance in which to impose [FRCP 11](#) sanctions, as filing a frivolous removal petition can be grounds for imposition of [Rule 11](#) sanctions if there is no "good faith argument" for removal. [Hewitt v. City of Stanton](#), 798 F.2d 1230, 1233 (9th Cir.1986); accord [Midlock v. Apple Vacations West, Inc.](#), 2005 U.S. App LEXIS 6718 (7th Cir.2005).

The court will liberally construe the phrase "good faith argument" and thus will not sanction Vedatech and Subramanian for the filing of the *first* petition of removal (although Vedatech and Subramanian will, as discussed above, pay St Paul's costs on attorney fees associated with the first petition). No amount of leniency, however, can excuse the frivolousness of the *second* petition for removal of the third action. As discussed above, when Vedatech and Subramanian removed the third action for the second time, Judge Conti had not adjudicated the *first* removal. Accordingly, there was no action to remove from the state court, as this court had jurisdiction over the third action as soon as it was removed the first time.

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28 USC § 1446(d). To make matters worse, the second petition (which is hundreds of pages in length) essentially duplicates the meritless arguments enumerated in the first petition. Accordingly, to call the second petition frivolous would be an understatement. The question is not whether the court should impose sanctions, the question is how much.

*11 Rule 11 applies to *pro se* plaintiffs like Subramanian. Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir.1994). In determining whether to sanction a *pro se* plaintiff, however, the Ninth Circuit urges district courts to use caution. *Id.* But even exercising extreme caution, the court determines sanctions are appropriate against Subramanian. "Rule 11 is intended to * * * deter [] [parties] who submit motions or pleadings which cannot reasonably be supported in law or fact." Golden Eagle Distributing Corp. v. Burroughs Corp., 801 F.2d 1531, 1542 (9th Cir.1986) (emphasis added). Subramanian has repeatedly abused the federal removal statutes and shows no signs of stopping this practice. He has filed not one, but *four* frivolous petitions for removal, causing continuous and unnecessary congestion of this court's docket. Moreover, this court (per Judges Hamilton, Fogel, Conti and the undersigned) has expended a large amount of judicial resources in adjudicating these petitions. Clearly, the only way to deter Subramanian from engaging in this behavior again is to invoke the monetary penalties of Rule 11.

The reprehensible conduct engaged in by Subramanian is magnified when it is applied to Gonzaga, an attorney. It is clear that Gonzaga (throughout this litigation) has simply signed off on a myriad of frivolous motions and pleadings drafted by Subramanian--including all four petitions for removal. As an officer of this court, Gonzaga owes a duty not to file papers that are procedurally defective and substantively indefensible. The second petition for removal of the third action alone demonstrates that Gonzaga has *egregiously* breached her duty to this court. The only method to deter Gonzaga from engaging in this type of reckless legal representation where she simply signs off on motions drafted by a *pro se* litigant is to invoke Rule 11.

In determining the appropriate amount of sanctions, the court is guided by the touchstone of Rule 11: Deterrence. As between Subramanian and Gonzaga, the court concludes it is Subramanian who needs to be deterred more from filing in the future frivolous motions, petitions and complaints. It is clear from Gonzaga's motion to withdraw as counsel for Vedatech that she is suffering the consequences of

simply allowing Subramanian to run the show in this litigation; the court doubts Gonzaga will make this error in judgment again. Accordingly, the court SANCTIONS Gonzaga \$5,000 pursuant to Rule 11.

Turning to Subramanian, the court concludes that although a sanction pursuant to Rule 11 is required to deter future frivolous filings, the large amount of attorney fees and costs already imposed on Subramanian to compensate St Paul and the amount that will be imposed on him to compensate Wulff, see *infra* Part III(B), will certainly serve the function of deterring similar filings in the future. Accordingly, the court SANCTIONS Subramanian \$1,000 pursuant to Rule 11. Subramanian is admonished, however, that the court will not hesitate to impose much harsher Rule 11 sanctions should he continue to engage in the conduct described in this order. If Subramanian files in this court (1) another frivolous petition for removal, (2) any frivolous motions in these cases, (3) a new frivolous cause of action or (4) any other filing worthy of Rule 11 sanctions, the court will impose sanctions at \$1,000 per page of each filing.

*12 Pursuant to FRCP 11(c)(1)(2), Gonzaga and Subramanian's sanctions are to be paid to the court on or before July 25, 2005.

Finally, to the extent St Paul seeks sanctions relating to Vedatech and Subramanian's filing of the FAC (as opposed to the two removal petitions), St Paul's motion is DENIED.

III

Motions to Dismiss

As mentioned above, in apparent anger over the settlement reached between St Paul, QAD and QADKK regarding the consolidated action, on March 30, 2004, Vedatech and Subramanian filed the fourth action in this court. Doc # 1. On June 15, 2004, Vedatech and Subramanian filed the FAC. Doc # 35. Named as defendants in the FAC are: (1) St Paul, (2) QAD, (3) QADKK, (4) Wulff and (5) 50 "Doe" defendants. *Id.* The 49-page, 160-paragraph FAC is truly a frightful piece of legal work. The FAC (1) makes dozens of unintelligible factual assertions; (2) is fraught with arguments, unsupported conclusions and case law citations; (3) contains two portions written as if the FAC were an opposition to a motion to dismiss and (4) even contains an internet article concerning mediation.

The complaint lists seven "causes of action": (1) declaratory judgment; (2) injunctive relief; (3) fraud

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and conspiracy to commit fraud; (4) constructive fraud and conspiracy to commit constructive fraud; (5) negligent misrepresentation; (6) breach of covenant of good faith and fair dealing; and (7) state unfair competition. As a preliminary matter, the court must dismiss one of these seven claims out of hand. Vedatech and Subramanian's "second cause of action" is titled "INJUNCTIVE RELIEF." *Id.* at 28. Under California law, however, "[i]njunctive relief is a remedy and not, in itself, a cause of action, and a cause of action must exist before injunctive relief may be granted." *Shell Oil Co., Inc. v. Richter*, 52 Cal.App.2d 164, 168, 125 P.2d 930 (1942) (citing *Williams v. Southern Pacific R R Co.*, 150 Cal. 624, 89 P. 599 (1907)). Accordingly, Vedatech and Subramanian's claim for injunctive relief is dismissed pursuant to FRCP 12(b)(6).

All defendants (save the Doe defendants) move to dismiss the FAC in its entirety under various state and federal rules.

A

Wulff's Motion to Dismiss

Vedatech and Subramanian allege five causes of action against Wulff: (1) declaratory judgment; (2) fraud; (3) constructive fraud; (4) negligent misrepresentation and (5) state unfair competition. In sum, Vedatech and Subramanian appear to allege that Wulff was not a neutral mediator but instead was biased in favor of St Paul which had used his services previously. Because Wulff was apparently biased towards St Paul, he (1) "tricked" Vedatech and Subramanian into signing the mediation confidentiality agreement, (2) did not terminate the mediation when Vedatech and Subramanian exited and (3) conspired with St Paul and QAD to create a settlement that harmed Vedatech and Subramanian. The court concludes that Wulff is immune from the claims asserted against him in the FAC.

*13 California law, which this court is required to apply in diversity actions pursuant to *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), grants "quasi-judicial immunity" to persons who "fulfill quasi-judicial functions intimately related to the judicial process." *Howard v. Drapkin*, 222 Cal.App.3d 843, 847, 271 Cal.Rptr. 893 (1990). In *Howard*, the parties to an underlying custody dispute stipulated that a psychologist could act as an independent fact-finder and make non-binding recommendations regarding allegations of physical and sexual abuse to the judge presiding over the dispute. *Id.* at 848, 271 Cal.Rptr. 893. This stipulation was ultimately signed by the court and

converted into an order. *Id.* The child's mother subsequently disagreed with the psychologist's findings and recommendations, asserting that the psychologist (1) was abusive during the six-hour mediation-like setting, (2) negligently prepared her findings so as to include false statements and omit critical information and (3) failed to disclose certain conflicts of interest and lack of expertise in child abuse matters. *Id.*

Based upon such allegedly inappropriate behavior, the mother filed a civil lawsuit against the psychologist, pleading causes of action for (1) fraud, (2) negligent misrepresentation, (3) professional negligence, (4) intentional infliction of emotional distress and (5) negligent infliction of emotional distress. The psychologist filed a general demurrer, contending that she enjoyed quasi-judicial immunity from the mother's suit. *Id.* at 850, 271 Cal.Rptr. 893. The trial court agreed and sustained the demurrer and the California court of appeal affirmed.

The *Howard* court began by stating that "under the concept of quasi-judicial immunity, California courts have extended absolute immunity to persons other than judges if those persons act in a judicial or quasi-judicial capacity." *Id.* at 852-53, 271 Cal.Rptr. 893. Such persons include court commissioners, grand jurors, administrative law hearing officers, arbitrators and prosecutors. *Id.* at 853, 271 Cal.Rptr. 893. Moreover, the court explicitly rejected the idea that only "public" officials enjoyed quasi-judicial immunity, for "if that were so, then arbitrators would not be protected by * * * [such] immunity." *Id.* at 854, 271 Cal.Rptr. 893. The court further noted "the relevant policy considerations of attracting to an overburdened judicial system the independent and impartial services and expertise upon which that system necessarily depends." *Id.* at 857, 271 Cal.Rptr. 893. Accordingly, the court held that all "nonjudicial persons who fulfill quasi-judicial functions intimately related to the judicial process should be given absolute quasi-judicial immunity for damage claims arising from their performance of duties in connection with the judicial process." *Id.*

"Without [this] immunity, such persons will be reluctant to accept court appointments or provide work product for the courts." *Id.* Moreover, "in order to best protect the ability of neutral third parties to aggressively mediate and resolve disputes, a dismissal at the very earliest stage of the proceedings is critical to the proper functioning and continued availability of these services." *Id.* at 905 (emphasis added).

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*14 Quite appropriately, Wulff cites *Howard* in support of his motion to dismiss all claims against him in this case. It is very telling that Vedatech and Subramanian's 25-page opposition to Wulff's motion to dismiss devotes only two pages squarely to addressing the *Howard* decision (while various and unintelligible other references to *Howard* are sprinkled throughout). Doc # 65 at 15-17. Inexplicably, Vedatech and Subramanian devote twelve pages of their opposition to reciting (unnecessarily) the status of quasi-judicial immunity under federal law (i.e., statutes and Supreme Court decisions). Id. at 3-14, 271 Cal.Rptr. 893 (concluding that "[i]t is clear that federal law is conclusively against the grant of any such immunity to private commercial mediators such as defendant Wulff."). But it is state law, not federal law, that controls this court's analysis in diversity cases. See Erie, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188.

Vedatech and Subramanian's opposition makes, in essence, two arguments why *Howard*'s logic does not mandate the dismissal of all claims against Wulff. First, they argue that *Howard*, insofar as it extended quasi-judicial immunity to "neutral third-party participants in the judicial process" was "unnecessary dictum," and thus is not binding on this court under *Erie*. Doc # 65 at 16. At one point, Vedatech and Subramanian even make the assertion that *Howard*'s extension of quasi-judicial immunity "is double-dicta." Id. at 15. Next, Vedatech and Subramanian argue that "it is clear * * * that the California Supreme Court itself is highly unlikely to uphold the [*Howard*] decision, and most certainly not for the extension of immunity to private commercial mediators." Id. at 2, 271 Cal.Rptr. 893. The court finds both arguments to be wholly without merit.

Far from being "unnecessary dictum" or "double dicta," *Howard*'s holding that "nonjudicial persons who fulfill quasi-judicial function * * * should be given absolute quasi-judicial immunity" was the court's *ratio decidendi*. In fact, the court devoted thirteen of the opinion's seventeen pages to the discussion of quasi-judicial immunity. Moreover, *Howard* was not appealed to the California Supreme Court and thus the assertion that *Howard* will not be "upheld" by the California Supreme Court is not only unpersuasive, but plainly wrong. Nor do Vedatech and Subramanian offer any convincing explanation why the California Supreme Court would disapprove of the reasoning in *Howard*. Indeed, *Howard* has been binding California precedent for over 14 years and a search of subsequent treatment of *Howard* by

California courts does not reveal a *single* instance of negative treatment among the 22 cases which have cited it.

Under *Howard*, Wulff is immune from all claims asserted against him in the FAC. Accordingly, the court GRANTS Wulff's motion to dismiss with prejudice pursuant to 12(b)(6). Because the court finds Wulff immune from the claims asserted in the FAC, it is unnecessary to decide whether communications made by Wulff during mediation are protected by Cal Civ Code § 47(b) or whether Vedatech and Subramanian have failed to exhaust state ADR-grievance remedies pursuant to Cal R Court 1622.

B

Rule 11 Sanctions Against Wulff

*15 On August 12, 2004, Vedatech and Subramanian filed a motion for sanctions pursuant to FRCP 11 against Wulff, his attorneys Douglas Young and Jessica Nall and the entire law firm of Farella, Braun & Martel LLP (Farella). Doc # 61.

Throughout Wulff's motion to dismiss the FAC, Wulff refers to himself as a "court-appointed" mediator, thus deserving of *Howard*'s immunity. Vedatech and Subramanian claim each time this label precedes Wulff's name, a "bad faith misrepresentation" to this court has occurred because the Santa Clara superior court never "appointed" Wulff as a mediator.

Vedatech and Subramanian never specify which part of Rule 11 Wulff has allegedly violated, but since the sanctions are directed at Wulff's defenses, the court presumes Rule 11(b)(2) is the relevant provision. Rule 11(b)(2) prohibits claims and defenses that are not "warranted by existing law or by a nonfrivolous argument for the extension or modification" of such law.

Far from being unwarranted by existing law, Wulff's claim that he was a court-appointed mediator is objectively true. Judge Komar's March 4, 2004, order states that all parties are to attend mediation before Wulff. Vedatech and Subramanian, however, argue that this order does not make Wulff court-appointed: "This order does not in any way 'appoint' Mr Wulff as a mediator, is not directed to Mr Wulff in any way or manner whatsoever, and does not create any official relationship between the Court and Mr Wulff." Doc # 61 at 6. Thus, because Judge Komar's order was directed to the parties, rather than Wulff himself, Wulff is not "court-appointed" even though all parties

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were ordered to mediate before him. [Rule 11](#) sanctions cannot be based upon such meaningless word play.

Further demonstrating the baseless nature of this [Rule 11](#) motion, Subramanian himself recognizes that *Howard*'s grant of immunity applies to mediators regardless whether the mediator has been court-appointed. See Doc # 87 (Nall Decl), Ex C (9/16/04 Transcript) at 54:25-55:2 (acknowledging that "*Howard v. Drapkin* does not necessitate that the mediator be a court-appointed mediator in order to qualify under its reasoning for absolute immunity.")

Vedatech and Subramanian's motion to impose [Rule 11](#) upon Wulff and his attorneys is DENIED.

The court may award to the person who prevails on a motion under [Rule 11](#) reasonable expenses, including attorney fees, incurred in presenting or opposing the motion. See Advisory Committee Notes to 1993 Amendments to [FRCP 11](#). Because courts may award fees to a party that prevails on a [Rule 11](#) motion, "a cross motion under [Rule 11](#) should rarely be needed." Id. As the target of, and prevailing party on Vedatech's and Subramanian's [Rule 11](#) motion, Wulff is entitled to an award of attorney fees. The court will employ the same calculation method explained above in awarding St Paul its attorney fees under [§ 1447\(c\)](#). See *supra* Part III.

Wulff requests 197.8 hours for services performed by attorneys at Farella in (1) researching and drafting an opposition to Vedatech's and Subramanian's motion for [Rule 11](#) sanctions, (2) preparing for and attending oral argument on the [Rule 11](#) motion and (3) researching and drafting Wulff's counter-motion for sanctions. Doc # 87 (Nall Decl) at 3-4. The court finds this to be an unreasonable expenditure of attorney resources.

***16** Among the factors to be taken into account in the reasonable hours component of the lodestar calculation is (1) the novelty and complexity of the issues and (2) the quality of the attorneys' work. [Morales v. City of San Rafael](#), 96 F.3d 359, 364 (9th Cir.1996). Vedatech's and Subramanian's [Rule 11](#) motion is essentially five pages in length and the alleged grounds for sanctions are hardly novel or complex. And while the quality of the attorneys' work is high, Wulff is not entitled recover for extraordinary hours incurred by a legal dream team; he is entitled to recover for the number of hours a reasonably competent counsel would have billed. Additionally, the court does not doubt that the Farella attorneys

spent a large amount of time preparing and strengthening Wulff's defense; Wulff is a former Farella partner. The fact that Wulff's attorneys worked almost 200 hours, however, does not make this number of hours reasonable.

Indeed 197.8 hours represents about one-tenth of a lawyer's annual billable hours. Put in this context, the unreasonableness of this extraordinary number of hours is evident. After reviewing (1) Vedatech's and Subramanian's [Rule 11](#) motion, (2) Wulff's opposition, (3) the time needed to prepare oral argument and (4) Wulff's counter-motion for sanctions, the court concludes that it would take a reasonable lawyer about two weeks of billable time-- or 75 hours-- effectively to oppose Vedatech's and Subramanian's [Rule 11](#) motion. Multiplying this reasonable number of hours by the average market rate for lawyers in the San Francisco area calculated above, the court concludes that Wulff is entitled to \$15,000 (75 hours x \$200/hour). Accordingly, Vedatech and Subramanian are jointly and severally liable to Wulff for \$15,000 incurred in opposing the unnecessary [Rule 11](#) motion.

Additionally, Wulff moves for sanctions against Vedatech and Subramanian pursuant to [28 USC § 1927](#). Doc # 86. Wulff bases his [§ 1927](#) cross-motion on Vedatech and Subramanian's "obstinate refusal to acknowledge the effect of" [Howard](#). Id at 6, 271 Cal.Rptr. 893.

"Any * * * person * * * who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney fees reasonably incurred because of such conduct." [28 USC § 1927](#). As this court has stated: The purpose of [§ 1927](#) is "to deter attorneys from multiplying legal proceedings unnecessarily, and to compensate attorneys forced to endure such proceedings." *Winfield v. Beverly Enterprises*, 1994 U.S. Dist LEXIS 2855, *10 (ND Cal 1994) (Walker, J). Sanctioning a party under [§ 1927](#) requires a "finding of recklessness or bad faith." [Barber v. Miller](#), 146 F.3d 707, 711 (9th Cir.1998). "Bad faith is present when a [party] knowingly or recklessly raises a frivolous argument." [Estate of Blas v. Winkler](#), 792 F.2d 858, 860 (9th Cir.1986). Finally, "section 1927 sanctions may be imposed on a *pro se* plaintiff." [Wages v. IRS](#), 915 F.2d 1230, 1235-36 (9th Cir.1990).

***17** The court agrees that Vedatech and Subramanian, recklessly and in bad faith, multiplied

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the legal proceedings against Wulff by recklessly raising frivolous arguments regarding the inapplicability of *Howard*. Wulff repeatedly and clearly informed Vedatech and Subramanian of *Howard*'s holding regarding quasi-judicial immunity and urged Vedatech and Subramanian to dismiss Wulff from the current suit. Vedatech and Subramanian refused and instead chose to make substantively indefensible attempts to distinguish *Howard*. First, they argued that Wulff was not "court appointed," as was the psychologist in *Howard*. This argument, however, has since been repudiated by Vedatech and Subramanian. Doc # 128 at 7 (admitting that "the psychologist in *Howard v. Drapkin* was not 'court-appointed'). Next, Vedatech and Subramanian argued that this court should not follow *Howard* because (1) the holding regarding quasi-judicial immunity is mere "dictum," and (2) the California Supreme Court is imminently preparing to overrule *Howard*. These legal contentions are unwarranted by existing law. As discussed above, there is *no indication* that this fourteen-year-old decision, relied upon by numerous lower courts, is about to be overruled by the California Supreme Court; Vedatech and Subramanian's conclusory assertion to the contrary is baseless and not offered in good faith. Finally, calling *Howard*'s quasi-judicial immunity holding "dictum" evidences a fundamental ignorance (either intentional or reckless) of the ability to read case law. This ignorance, however, is no defense to Wulff's cross-motion for fees and costs. See *Temple v. WISAP USA*, 1993 U.S. Dist LEXIS 18453, *19 (D Neb 1993) ("Mistaken judgment, ignorance of law or personal belief with regard to what the law should be," does not negate the filing of a legally baseless document).

No doubt Vedatech and Subramanian wish *Howard* did not exist or that its holding could be characterized as dictum. These personal beliefs, however, do not constitute good faith legal arguments. The court concludes that Wulff should never have been forced into defending himself against Vedatech and Subramanian's vexatious, frivolous and legally deficient claims in the FAC; he should have been dismissed from the outset. Vedatech and Subramanian, however, "unreasonably and vexatiously" multiplied the proceedings in this case against Wulff as prohibited by [§ 1927](#).

Accordingly, the court GRANTS Wulff's motion for [§ 1927](#) sanctions. Wulff states that his attorneys billed 290.9 hours for services performed and \$2,300 in costs incurred in researching and drafting his motion to dismiss the FAC. Doc # 87 at 4. All

attorneys at Farella who worked on Wulff's case, however, charged a uniform "reduced rate" of \$225/hour. Id. Accordingly, Wulff claims he incurred \$67,752.50 in attorney fees, costs and expenses associated with defending against the FAC (290.0 hours x \$225/hour = \$65,452.50 + \$2,300 in costs = \$67,752.50). This amount seems too high. This is confirmed by Wulff's request for only one-third of this amount, \$22,584.16 or, alternatively, \$70/hour (\$22,584.16--\$2,300 = \$20,284.16 / 290.9 = \$69.73/hour). [Id at 5, 271 Cal.Rptr. 893](#).

*18 Farella does not fully explain the steep discount from their claimed normal billing rates. This seems to confirm that counsel's so-called normal billing rates are the starting point for negotiations concerning fees. In any event, in this case, the court need not explore all the details as the amount claimed by Wulff appears reasonable. Applying the \$200/hr average market rate (not the \$225/hour rate of the Farella attorneys) to the requested \$20,284.16 for attorney fees, it appears Wulff's request for fees is tantamount to seeking compensation for 101.42 hours reasonably expended in defending against the FAC (\$20,284.16/\$200 = 101.42).

Having considered the tangled and complicated nature of the legal and factual issues raised by Vedatech's and Subramanian's 49-page FAC, as well as the quality of the attorneys' work product, the court finds the claim for 101.42 hours of attorney services and \$2,300 in legal research and duplicating costs to be reasonable in preparing and defending Wulff's motion to dismiss the hefty FAC. Accordingly, the court finds the following award of attorney fees and costs justified: 101.42 hours at \$200/hour, yielding \$20,284. The court then adds the \$2,300 incurred in duplication and legal research, yielding the requested total of \$22,584.

Accordingly, pursuant to [§ 1927](#), the court finds Subramanian and Vedatech jointly and severally liable to Wulff for \$22,584 in attorney fees, costs and expenses incurred in defending against the FAC.

C

St Paul's and QAD's Motions to Dismiss

St Paul, QAD and QADKK all move to dismiss the FAC in its entirety pursuant to [FRCP 12\(b\)\(6\)](#). Docs # 44 (St Paul Mot), # 45 (QAD/QADKK Mot). Because the legal arguments offered by St Paul and QAD in support of their individual motions substantially overlap and because Vedatech and Subramanian address both motions in a single opposition memorandum, Doc # 66, the court will

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address these two dispositive motions in tandem.

1

FRCP 12(b)(6) motions to dismiss essentially "test whether a cognizable claim has been pleaded in the complaint." *Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 436 (6th Cir.1988). Although a plaintiff is not held to a "heightened pleading standard," the plaintiff must provide more than mere "conclusory allegations." *Swierkiewicz v. Sorema NA*, 534 U.S. 506, 515, 122 S.Ct. 992, 152 L.Ed.2d 1 (2002) (rejecting heightened pleading standards); *Schmier v. United States Court of Appeals for the Ninth Circuit*, 279 F.3d 817, 820 (9th Cir.2002) (rejecting conclusory allegations).

Under Rule 12(b)(6), a complaint "should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle [her] to relief." *Hughes v. Rowe*, 449 U.S. 5, 9, 101 S.Ct. 173, 66 L.Ed.2d 163 (1980) (citing *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)); see also *Conley*, 355 U.S. at 45-46. All material allegations in the complaint must be taken as true and construed in the light most favorable to plaintiff. See *In re Silicon Graphics Inc. Sec. Lit.*, 183 F.3d 970, 980 n10 (9th Cir.1999). But "the court [is not] required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir.2001) (citing *Clegg v. Cult Awareness Network*, 18 F.3d 752, 754-55 (9th Cir.1994)).

*19 Review of a FRCP 12(b)(6) motion to dismiss is generally limited to the contents of the complaint, and the court may not consider other documents outside the pleadings. *Arpin v. Santa Clara Valley Transp. Agency*, 261 F.3d 912, 925 (9th Cir.2001). The court may, however, consider documents attached to the complaint in connection with a motion to dismiss. *Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir.1995). Additionally, the court may consider "documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading." See *Lapidus v. Hecht*, 232 F.3d 679, 682 (9th Cir.2000) (internal quotation omitted).

2

Declaratory Relief

In their first cause of action, Vedatech and Subramanian ask this court for a declaratory

judgment pursuant to 28 USC § 2201. Regarding St Paul, Vedatech and Subramanian seek fourteen judicial declarations. Doc # 35 (FAC) at 25-27. This lengthy list of requested declarations, in essence, requests this court to declare that: (1) the settlement agreement with QAD is null and void; (2) St Paul had no authority to enter into this agreement and (3) St Paul has acted in bad faith and breached its fiduciary duties to Vedatech and Subramanian in entering into the settlement agreement. Regarding QAD and QADKK, Vedatech and Subramanian ask this court to declare that: (1) QAD and QADKK cannot rely upon the settlement agreement as a defense to Vedatech and Subramanian's affirmative claims in the second action and (2) any release of claims (affirmative or counterclaims) by QAD and QADKK under the settlement agreement are final.

The court begins by noting the contradictory nature of these requested declarations; Vedatech and Subramanian ask the court to declare the settlement agreement non-binding on Vedatech and Subramanian, but then request the court declare it binding and final on QAD and QADKK. More importantly, however, the court notes the duplicative nature of these declarations--the issues underlying these declarations (e.g., the validity of the agreement, St Paul's authority to enter into the agreement and the presence of bad faith) are *all* squarely before the Santa Clara superior court in the twice-remanded consolidated action and in the now-remanded third action. Whether the settlement agreement is binding, void, unconscionable or the product of bad faith are all arguments that can be made to Judge Komar, the judge who will actually be the one to enforce the settlement agreement in the consolidated action. Moreover, Vedatech and Subramanian recognize this fact in their opposition by stating: "Any effect of any order preventing QAD and St Paul from proceeding with their 'settlement,' will be *exactly the same as an order that may be obtained within either of the underlying cases.*" Doc # 66 at 6-7. The court agrees with Vedatech and Subramanian's assertion.

Accordingly, Vedatech and Subramanian are asking the court to issue a declaratory judgment regarding certain contractual rights they, St Paul, QAD and QADKK *may* or *may not* have in two pending state court cases. It is clear that Vedatech and Subramanian are wary regarding whether Judge Komar will decide to enforce the settlement agreement. This apprehension, however, is insufficient to justify this court exercising its discretion to issue declaratory relief. The Ninth Circuit has made clear that the purpose of declaratory

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relief in federal courts is not to "provide insurance against [a] state court deciding the * * * issues less favorably than a district court." Exxon Shipping Co. v. Airport Depot Diner, Inc., 120 F.3d 166, 169 (9th Cir.1997). "Declaratory relief is not authorized so that lower federal courts can sit in judgment over state courts, and it is not a substitute for removal." Id at 170 (emphasis added). See also 26 CJS Declaratory Judgments § 120 ("The declaratory judgment procedure should not be employed by federal courts to control state action, or to bring into the federal courts actions which are pending in the state courts.").

*20 Under *Exxon*, Vedatech and Subramanian cannot avoid Judge Komar's adjudication of issues squarely before him in state court by seeking declaratory relief in federal court. Accordingly, the court refuses to exercise its discretion in issuing declaratory relief and GRANTS St Paul's, QAD and QADKK's motions to dismiss with prejudice Vedatech and Subramanian's first cause of action for declaratory relief.

3

Fraud

Next, Vedatech and Subramanian assert causes of action for fraud against St Paul, QAD and QADKK. Doc # 35 (FAC) at 31-35. Vedatech and Subramanian contend that St Paul intentionally "failed to disclose the nature and details of [its] prior contacts and relationship with Wulff." Id at 32. St Paul intentionally withheld this information, according to Vedatech and Subramanian, to "induce them to attend the mediation under terms that were favorable to [St Paul, QAD and QADKK] and harmful to [Vedatech and Subramanian]." Id at 33. Moreover, QAD and QADKK "became aware of [St Paul's] fraudulent schemes during the mediation," but "with an intent to harm Vedatech [and Subramanian] * * * QAD participated in the ongoing fraudulent scheme * * * rel[ying] upon the idea that the cloak of secrecy in mediation can be used to engage in fraudulent and collusive schemes * * *." Id at 35. Finally, Vedatech and Subramanian assert that they indeed relied upon these fraudulent omissions when they "consented" to attend the mediation and thus the fraud has caused them "heavy damages." Id at 34.

To prevail on a claim for fraud in California, Vedatech and Subramanian must prove by a preponderance of the evidence that: (1) St Paul, QAD and QADKK made a knowingly false representation; (2) the false representation was made with the intent to deceive or induce reliance by Vedatech and

Subramanian; (3) Vedatech and Subramanian justifiably relied on these false representations; and (4) they incurred damages resulting from the fraud. Smith v. Allstate Insurance Co., 160 F Supp 2d 1150, 1152 (S.D.Cal.2001) (citing Wilkins v. Nat'l Broadcasting Co., 71 Cal.App.4th 1066, 84 Cal.Rptr.2d 329 (1999)). Additionally, alleged material omissions (as alleged in this case) may constitute a "false representation" under the first element of fraud "when the defendant[s] had exclusive knowledge of material facts not known to the plaintiff[s]." Wilkins, 71 Cal.App.4th at 1082, 84 Cal.Rptr.2d 329.

The court cannot grant St Paul's, QAD's and QADKK's 12(b)(6) motion to dismiss unless it appears beyond doubt that Vedatech and Subramanian can prove no set of facts in support of their fraud claim which would entitle them to relief. Hughes, 449 U.S. at 9.

Vedatech and Subramanian claim that St Paul, QAD and QADKK concealed a material fact (known only to them) when they failed to disclose that Wulff had conducted prior meditations for St Paul. Assuming that St Paul withheld such information, under *Wilkins*, such an omission could meet the first element of a fraud claim. Next, they claim that these omissions and representations were made to induce Vedatech and Subramanian to consent to mediation before Wulff and thus the second element of a fraud claim could be proven. Vedatech and Subramanian's own submissions to the court, however, show that they can prove no set of facts that would meet the third and fourth elements of a fraud claim. Vedatech and Subramanian assert that they "were unaware of the information that was deliberately withheld from them, and relied upon these misrepresentations * * * in consenting" to attend mediation before Wulff. Doc # 35 at 34. No facts can support this assertion for, quite simply, it is not true. Vedatech and Subramanian did not "consent" to mediate before Wulff; they were ordered--twice--by Judge Komar to attend the Wulff mediation. Judge Komar first ordered Vedatech and Subramanian to attend this mediation on February 6, 2004. Doc # 84, Ex 6 (Med Order) ("It is ORDERED that Mani Subramanian is required by the Court to appear in person at mediation with St Paul and QAD parties in front of Randall Wulff * * *. Failure to appear at the mediation will bring Mr Subramanian in contempt of the Court * * *."). What is more, it was Vedatech and Subramanian, not any of the defendants, that supplied the court with a copy of Judge Komar's February 6, 2004, order. On March 4, 2004, Judge Komar again

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ordered the parties to attend mediation before Wulff. Doc # 46, Ex B (2d Med Order). Accordingly, Vedatech and Subramanian cannot prove facts showing their attendance at the mediation was *based upon* justifiable reliance on defendants' alleged omissions; their attendance was based upon court order. Because they can offer no facts to prove this third element of fraud, Vedatech and Subramanian have failed to state a cause of action for fraud.

***21** Because St Paul, QAD and QADKK cannot be held liable in tort for fraud, it follows that none can be liable for conspiracy to commit fraud. "Standing alone, a conspiracy does no harm and engenders no tort liability. It must be activated by the commission of an actual tort. A civil conspiracy, however atrocious, does not per se give rise to a cause of action unless a civil wrong has been committed resulting in damage." Allied Equipment Corp. v. Litton Saudi Arabia Limited, 7 Cal.4th 503, 511, 28 Cal.Rptr.2d 475, 869 P.2d 454 (1994) (internal quotations and citation omitted).

For these reasons, St Paul's, QAD's and QADKK's motions to dismiss with prejudice the FAC's claims of fraud and conspiracy to commit fraud are GRANTED.

4

Constructive Fraud

Next, Vedatech and St Paul assert a cause of action for constructive fraud against St Paul. Doc # 35 at 36. For the reasons discussed above in connection with dismissal of the fraud claims, Vedatech and Subramanian have failed to state a claim for constructive fraud.

"Unlike actual fraud, constructive fraud depends on the existence of a fiduciary relationship of some kind * * *. The elements of the cause of action for constructive fraud are: (1) fiduciary relationship; (2) nondisclosure (breach of fiduciary duty); (3) intent to deceive, and (4) reliance and resulting injury (causation)." Younan v. Equifax, Inc., 111 Cal.App.3d 498, 516-17n14 (1980). Vedatech and Subramanian assert that St Paul owed them a fiduciary duty as an insurer and thus element one is met (QAD and QADKK have no fiduciary relationship with Vedatech and Subramanian). Next, they claim that St Paul failed to disclose its prior connections with Wulff with the intent to deceive Vedatech and Subramanian into consenting to attend the mediation (element two and three). The fact that Judge Komar ordered Vedatech and Subramanian to attend the Wulff mediation, however, prevents them from

proving facts to support the last element of constructive fraud. Again, Vedatech and Subramanian's attendance at the mediation was not the product of reliance on any alleged omission by St Paul; *the attendance was court-ordered*.

For the same reasons discussed above in relation to conspiracy to commit fraud, Vedatech and Subramanian cannot state a cause of action for conspiracy to commit constructive fraud. See *supra* Part IV(C)(3). St Paul's motion to dismiss with prejudice the FAC's claim of constructive fraud and conspiracy to commit constructive fraud is GRANTED.

5

Negligent Misrepresentation

Next, Vedatech and Subramanian assert a cause of action against St Paul for negligent misrepresentation. Doc # 35 at 39. The allegations underlying this claim are the same omissions used to form the basis for the fraud and constructive fraud claims (i.e., failure to disclose St Paul's prior connection with Wulff). In California, however, negligent misrepresentation requires a "positive" assertion or representation which is false; representation by omission is not sufficient. Byrum v. Brand, 219 Cal.App.3d 926, 942, 268 Cal.Rptr. 609 (1990). See also Sharp v. Hawkins, 2004 U.S. Dist LEXIS 22928, * 11 (ND Cal 2004) (stating that under California law, "omissions or non-disclosure * * * standing alone are insufficient to sustain a claim for negligent misrepresentation." (citing Byrum, 219 Cal.App.3d at 942, 268 Cal.Rptr. 609)).

***22** Because Vedatech and Subramanian's claim for negligent misrepresentation is based upon non-disclosures, the court GRANTS St Paul's motion to dismiss with prejudice the FAC's claims for negligent misrepresentation.

6

Insurance Bad Faith

Next, Vedatech and Subramanian assert a cause of action against St Paul for "insurance bad faith (breach of covenant of good faith and fair dealing)." Doc # 35 at 40-42. In support of this claim, Vedatech and Subramanian offer the court a laundry list of alleged bad faith acts committed over a period of years by St Paul. Id. The court, however, need not determine whether Vedatech and Subramanian have stated a cause of action for "insurance bad faith," for even if such a claim has been stated, the court must abstain from adjudicating this claim pursuant to Colorado River Water Conservation District v.

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United States, 424 U.S. 800, 96 S.Ct. 1236, 47 L.Ed.2d 483 (1976).

As ordered above, the third action is remanded back to state court (State Docket No 1-02-CV-805197). See *supra* Part III. In the third action, St Paul seeks a judicial declaration regarding the scope of its duty to defend Vedatech and Subramanian in relation to the consolidated action as well as other issues surrounding the insurance policy. Vedatech and Subramanian filed a counterclaim in the this action alleging "insurance bad faith." In fact, just prior to removing the third action to this court, Vedatech and Subramanian filed their 112-page fourth amended cross-complaint against St Paul in state court. See 1-02-CV-805197, Doc # 121. Moreover, in asserting the claim for insurance bad faith, the FAC *directs* the court's attention to the *state court* fourth amended cross-complaint in the third action to detail fully the bad faith allegations against St Paul. Doc # 35 (FAC) at 40. Because the court has now remanded the third action back to state court, there are now two "insurance bad faith" claims asserted by Vedatech and Subramanian against St Paul; one is in state court and the other is in federal court.

As this court has recently stated, "the *Colorado River* doctrine permits [dismissal of a case] in the interests of wise judicial administration when substantially similar claims are pending in state court." *Le v. County of Contra Costa*, 1999 U.S. Dist LEXIS 19611, *2 (ND Cal 1999) (Walker, J) (citations omitted). "The threshold question is whether the state and federal suits are substantially similar." Id at 3 (citing *Nakash v. Marciano*, 882 F.2d 1411, 1416 (9th Cir.1989)). "If so, the factors to consider are: (1) the desirability of avoiding piecemeal litigation; (2) the inconvenience of the federal forum; (3) the order in which jurisdiction was obtained; (4) the source of the governing law and (5) whether the state court proceedings could adequately protect the federal plaintiff's rights." Id (citing *Martinez v. Newport Beach City*, 125 F.3d 777, 785 (9th Cir.1997)). Additionally, the court may consider whether the plaintiff in the federal action has engaged in forum shopping. *Silvaco Data Systems, Inc. v. Technology Modeling Associates, Inc.*, 896 F.Supp. 973, 975 (N.D.Cal.1995) (citing *Nakash*, 882 F.2d at 1417).

*23 Here, the combination of these factors make a compelling case for abstention under *Colorado River*. First, the state and federal suits involve the same parties and claims and arise out of the same conduct. California law regarding contracts and insurance will

govern both cases. Piecemeal litigation would certainly result if the federal action were to proceed. The state court obtained jurisdiction first; well over two years prior to the federal court. The convenience factor is neutral. With respect to the rights of Vedatech and Subramanian, the court is convinced that the state court is up to the task of deciding state law claims arising from an alleged breach of the duty of good faith and fair dealing. Finally, to say that Vedatech and Subramanian have engaged in forum shopping would be an understatement; they are desperate to obtain a federal forum to prevent the state court from enforcing the settlement agreement, and they have employed several inappropriate means to attain this forum. These reasons, plus an obvious advancement of judicial economy, convince the court it should abstain from adjudicating Vedatech and Subramanian's claim for insurance bad faith to avoid duplicative state proceeding.

"[D]istrict courts *must* stay, rather than dismiss, an action when they determine that they should defer to the state court proceedings under *Colorado River*." *Coopers & Lybrand v. Sun-Diamond Growers of California*, 912 F.2d 1135, 1138 (9th Cir.1990) (emphasis added). Accordingly, the court DENIES St Paul's motion to dismiss the claim for insurance bad faith. Rather, the court STAYS adjudication of this claim pending the resolution of Vedatech's and Subramanian's fourth amended counterclaim in the third action in the Santa Clara superior court.

Vedatech and Subramanian shall file with the court a status report within 30 days of disposition of the insurance bad faith claim in state court. Failure timely to file such a report shall be deemed a failure to prosecute and result in dismissal of this action. To be clear, Vedatech and Subramanian are *not* to file any other memoranda relating to this cause of action save the above described status report.

7

Unfair Competition

Finally, Vedatech and Subramanian assert a claim for unfair competition against St Paul, QAD and QADKK pursuant to Cal Bus & Prof Code § 17200 et seq. Cal Bus & Prof Code § 17203 provides, in pertinent part, that:

any person who * * * has engaged * * * in unfair competition may be enjoined * * *. The court may make such orders or judgments * * * as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

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For the purposes of the current claim, the term "unfair competition" is defined as "any unlawful, unfair or fraudulent business act or practice." [Cal Bus & Prof Code § 17200](#).

According to Vedatech and Subramanian, St Paul, QAD and QADKK have engaged in a "pattern of behavior that is unlawful, unfair or fraudulent," including (as with most other claims in the FAC): (1) St Paul's failure to disclose its prior contacts with Wulff, (2) fraudulently obtaining Vedatech and Subramanian's "consent" to attend the mediation and (3) QAD and QADKK learning of such deception and failing to disclose it in order to "benefit to the tune of \$500,000." Doc # 35 (FAC) at 42-46. In essence, Vedatech and Subramanian claim that St Paul and QAD engaged in unfair competition by fraudulently obtaining Vedatech and Subramanian's consent to attend mediation and the resulting injury was the settlement agreement between St Paul, QAD and QADKK which (1) deprived Vedatech and Subramanian of their right to pursue affirmative claims against QAD and QADKK and (2) unjustly enriched QAD and QADKK by \$500,000 which belonged to Vedatech and Subramanian.

***24** The FAC seeks restitution from QAD and QADKK in the amount of \$500,000 and requests (nebulously) the court to order St Paul to disgorge "all benefits that are due to Vedatech under the California Unfair Competition laws." Vedatech and Subramanian are careful to frame all requested relief in the form of equitable remedies, as [§ 17203](#) does not allow damages to be recovered. [Korea Supply Co. v. Lockheed Martin Corp.](#), 29 Cal.4th 1134, 1144, 131 Cal.Rptr.2d 29, 63 P.3d 937 (2003). For several reasons, Vedatech and Subramanian can prove no set of facts to support this cause of action and thus the claim must be dismissed pursuant to [FRCP 12\(b\)\(6\)](#).

First, as the court discussed above, no fraudulent or unfair practice on the part of St Paul, QAD or QADKK caused Vedatech and Subramanian to attend the mediation; attendance was court-ordered by Judge Komar--twice. Next, assuming arguendo that the alleged non-disclosures did trick Vedatech and Subramanian into attending the Wulff mediation, they cannot prove that the resulting settlement agreement (the genesis of all ensuing "damages") was, in the words of [§ 17203](#), "acquired by means of such unfair competition." The settlement agreement explicitly states that "it is not intended to impair the prosecution by Vedatech of any and all affirmative claims that may exist with respect to the First or Second Action * * *." Doc # 35 (FAC), Ex A (Sett

Agreement) at 5 ¶ 8. Moreover, as mentioned above, the settlement agreement was not entered into until *after* Vedatech and Subramanian left the mediation. If Vedatech and Subramanian were not present when the settlement agreement was negotiated, it follows that the settlement agreement could not have been acquired by the means of St Paul, QAD and QADKK's alleged fraudulent scheme to trick Vedatech and Subramanian into attending the mediation.

Finally, even if St Paul, QAD and QADKK engaged in unfair practices (which the court assumes solely for this motion) and even if these practices tricked Vedatech and Subramanian into attending the mediation (which clearly they did not), Vedatech and Subramanian can prove no facts showing that they are entitled to any equitable relief. First, Vedatech and Subramanian's nebulous assertion that they are entitled to require St Paul to "disgorge all such benefits that are due" to Vedatech and Subramanian is conclusory and unwarranted and thus does not suffice to state a cause of action. St Paul received *nothing* via the settlement agreement that the court can order them to disgorge (if anything, St Paul was forced to pay \$500,000). Nor can Vedatech and Subramanian prove that they are entitled to restitution of the \$500,000 which was paid to QAD and QADKK by St Paul. "[R]estitution [is an order] compelling a [] defendant to return money obtained through an unfair business practice to those persons * * * who had an ownership interest in the property * * *." [Korea Supply Co.](#), 29 Cal.4th at 1144-45, 131 Cal.Rptr.2d 29, 63 P.3d 937. Vedatech and Subramanian, however, have pled no facts showing that they have any ownership interest in the \$500,000 St Paul paid to QAD and QADKK. Rather, the FAC simply states that St Paul paid QAD and QADKK the \$500,000 "from funds that [were] held in trust for the Vedatech parties." Doc # 35 at 47. This legal conclusion, however, is not supported by any facts pled in the FAC and legal conclusions, standing alone, cannot suffice to state a cause of action. See [Sprewell](#), 266 F.3d at 988 ("the court [is not] required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.").

***25** For the numerous and substantial reasons discussed above, St Paul's, QAD's and QADKK's motions to dismiss with prejudice the FAC's seventh cause of action for unfair competition are GRANTED.

IV

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QAD and QADKK Motion for Sanctions

Finally, QAD and QADKK move this court to sanction Vedatech and Subramanian pursuant to [FRCP 11](#). The court, however, has already sanctioned Vedatech, Subramanian and Gonzaga for the improper behavior each has demonstrated throughout this litigation and the court does not believe any further [Rule 11](#) sanctions are appropriate at this time. Additionally, QAD and QADKK move for sanctions pursuant to [§ 1927](#). The court does not believe such sanctions are appropriate. QAD and QADKK have not had to defend two frivolous petitions for removal (at least not in the present action) as St Paul has had to do, nor have QAD and QADKK had to defend a frivolous [Rule 11](#) motion as Wulff has had to do. QAD and QADKK were named in the FAC, they filed a motion to dismiss and the motion is now being adjudicated. No doubt QAD and QADKK have incurred costs and fees in defending against the FAC. But every defendant incurs costs and fees. The costs and fees awarded to St Paul and Wulff above did not stem from simply being named in the FAC and having to defend themselves.

QAD and QADKK's motion to sanction is DENIED.

V

In sum, the court GRANTS St Paul's motions (04-1403 Docs 11, 40) (C-04-1818 Docs 7, 19) to remand and REMANDS Nos 04-1818 and 04-1403 to Santa Clara superior court. The court ORDERS Vedatech and Subramanian to pay \$20,738.75 to St Paul pursuant to [28 USC § 1447\(c\)](#). Additionally, the court GRANTS St Paul's motion for [Rule 11](#) sanctions (04-1249 Doc # 97) (04-1403 Doc # 52) (04-1818 Doc # 32) and SANCTIONS Subramanian \$1,000 and SANCTIONS Gonzaga \$5,000. These sanctions are payable to the court on or before July 25, 2005.

The court GRANTS Wulff's motion to dismiss (04-1249 Doc # 52). The court DENIES Vedatech's and Subramanian's motion for [Rule 11](#) sanctions against Wulff (04-1249 Doc # 61). The court ORDERS Vedatech and Subramanian to pay Wulff \$15,000 for fees and costs incurred in opposing the [Rule 11](#) motion. Additionally, the court GRANTS Wulff's motion for sanctions pursuant to [§ 1927](#) (04-1249 Doc # 86) and ORDERS Vedatech and Subramanian to pay \$22,584 to Wulff.

QAD's and QADKK's motions to dismiss with prejudice all claims asserted against them are GRANTED (04-1249 Doc # 44). QAD and QADKK's motion for sanctions are DENIED (04-

1249 Doc # 106). St Paul's motion to dismiss the FAC is GRANTED IN PART (04-1249 Doc # 45). The court STAYS adjudication of Vedatech's and Subramanian's claim for insurance bad faith against St Paul.

Hence, every action and claim (save one) to which Vedatech is a party has been either remanded or dismissed and the one remaining claim has been stayed pending state court resolution. Accordingly, the court does not find it appropriate to rule on Gonzaga's and Knopf's second motion to withdraw as counsel for Vedatech. If they still wish to withdraw as counsel, they should address their arguments to the Santa Clara superior court. Accordingly, the second motion to withdraw is DENIED as moot (04-1249 Doc # 148) (04-1403 Doc # 70) (04-1818 Doc # 51). Gonzaga and Knopf's motions to strike are DENIED as moot. (04-1249 Doc # 154) (04-1403 Doc # 74) (04-1818 Doc # 55). Subramanian and Vedatech's motion for further oral argument are DENIED as moot. (04-1249 Doc # 112) (04-1403 Doc # 63) (04-1818 Doc # 43). Finally, Subramanian and Vedatech's request to remain an e-filer in 04-1403 is DENIED as moot.

***26** The clerk shall administratively close the file. This does not represent a final adjudication but an administrative convenience for the court. Upon receipt of the state court's order resolving the insurance bad faith claim in the state court, the clerk shall re-open the file upon a request of one of the parties.

IT IS SO ORDERED.

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EXHIBIT F -
QAD Request for Judicial Notice

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

QAD Inc. et al.,
Plaintiffs,

v.

SUBRAMANIAN et al.,
Defendants.

No. CV771638

MANI SUBRAMANIAN,
Plaintiff and Appellant,

v.

LAI FOON LEE,

Defendant and Respondent.

No. CV784685

Court of Appeal - Sixth App. Dist.
FILED

OCT 13 2006

MICHAEL J. YERLY, Clerk

By _____

DEPUTY

H030456

Santa Clara County No. CV771638

Santa Clara County No. CV784685

BY THE COURT:

The appellant having failed to file a certificate of interested entities or persons in compliance with rule 14.5 (c) (1), California Rules of Court, after notice given pursuant to rule 14.5 (c) (2), the appeal filed on July 24, 2006, is dismissed.

Date: OCT 13 2006

RUSHING, P.J.

P.J.

Court of Appeal, Sixth Appellate District - No. H030456
S156063

IN THE SUPREME COURT OF CALIFORNIA

En Banc

QAD INC. et al., Plaintiffs,

v.

SUBRAMANIAN, et al., Defendants.

and COMPANION CASE

The petition for review is denied.

SUPREME COURT
FILED

OCT 10 2007

Frederick K. Ohlrich Clerk

Deputy

GEORGE
Chief Justice